

1

**Open Meeting-
Call to order by
Chairman
Stix**

1A

Pledge of Allegiance

1B

Roll
Call

1C

Approve
8/6/2013
Minutes

*Possible Action

Name of Organization: Nevada Board of Agriculture

Date and Time of Meeting: August 6, 2013

Place of Meeting: Nevada Department of Agriculture
4750 E. Idaho Street
Elko, Nevada
775-728-8086

Minutes

August 6, 2013

Board Members Present:

Dave Stix, Jr., Chairman
Jim Snyder
Boyd Spratling
Paul Noe
Timothy Dufferena
Ramona Morrison
Charlie Frey – by Video

Board Members Absent:

Alan Perazzo
Paul Anderson

Guests:

Cathy Erskin
Mark Jensen
Brett Scolari
Michael Hillerby
Audrey Spratling

Staff Members Present:

Jim Barbee, Director
Dennis Belcourt, Deputy A.G.
Dale Hanson, Administration
Flint Wright, Animal Services
Donnell Barton, Food and Nutrition
Bob Conrad, PIO
Gina Breslow, Executive Assistant

By Video Conference:

Lynn Hettrick, Deputy Director
Dave Jones, Consumer Equitability
Dawn Rafferty, Plant Industry
Steve Marty
Kathy Easley
Brandon Harmon

1. Open meeting-call meeting to order by Chairman Dave Stix, Jr. at 09:00 am.

- A. Pledge of Allegiance
- B. Roll call – Seven Board Members Present
- C. *Approve June 6, 2013 Board meeting minutes (*for action*)
Moved by Paul Noe and Seconded by Jim Snyder. Boyd Spratling abstains (absent from 6/6 mtg). Passed with unanimous support.

2. Public Comment

Hank Vogler opens discussion on “Band Inspection Fees”. Chairman Stix, noting this was the “Public Comment” period, recommends that Brand Inspection Fees be discussed a future Ag Board Meeting under Member Presentations or Animal Industry. Mr. Vogler agrees and Director Barbee agree.

3. Director’s Report

- A. Introduction of new Staff
 - Donnell Barton, Administrator – Food and Nutrition
 - Dale Hanson, Fiscal Administrator
 - Flint Wright, Administrator – Animal Services
 - Bob Conrad – Public Information Officer
 - Gina Breslow – Executive Assistant
- B. Activity report for time period June 6, 2013 through August 6, 2013. *(for information)* Chairman Stix suggests “Brand District Lines” be part of Director’s Presentation for next Board Meeting.

4. Plant Industry

(Board asks to switch Items A and B)

B. *Request Approval for nomination of Lindsay Dixon (Peri and Sons Farms) Bio Incl., and Nicole Sallaverry (Great Basin Community Food Co-Op) Bio Incl., to serve on Nevada Organic Advisory Council. *(for action)*

Concern is raised by Board regarding NV Grown & WNCC Specialty Crops - Branding and Labeling “fairness” and Marketing. Barbee: MOU w/Brand & Label will go out tomorrow.

*Request for Approval of nomination of BOTH individuals above repeated:

Moved by Boyd Spratling and Seconded by Ramona Morrison, Passed with unanimous support.

5. Consumer Equitability

Updates to Board NAC 581 workshops and SB433, Annual Billing, Manganese SB 433.

6. Food and Nutrition

Programs Updates – Informational Packet

7. **Animal Industries**

Program Updates

8. **Board Member Presentations**

Ramona Morrison: 2001 Grazing Statistics Report and Economic Analysis for Federal Lands in Nevada - Handout

9. **Public Comment**

None

10. **Adjournment**

Board Meeting adjourned at 1:05.

Moved by Jim Snyder and Seconded by Ramona Morrison. No objection.

2

Public Comment

3

Directors Report

3A

Director
Barbee's
Activity
Report

Directors Report
June 12 to August 1, 2013
Jim R. Barbee

August, 2013

- 2 NNDA, GOED and NDA Cooperative Meeting
- 6 NDA Board Meeting
- 7 Nevada Grown Board Meeting
- 7 Dennis Golden – PBS Educational Materials
- 8 Chief of Staff Meeting
- 14 Mark Walker Dean of Cooperative Extension
- 19 USA Parkway and Carson River Tour
- 20 Chief of Staff Meeting
- 28 Governors Small Conf Meeting
- 29 WUSATA Meeting

September

- 4 Paula Berkley Food Bank Meeting
- 5 Chief of Staff meeting
- 8-11 NASDA Fall Meeting Asheville NC
- 12 FFA Foundation Meeting
- 14-18 Vacation
- 20 FFA Foundation Meeting
- 23 Clark County Centralized Kitchen
- 24 Pest Control Hearing
- 25 Dept of Admin Meeting
- 30 Nevada Wines, National Republicans Ag Commissioners

October

- 2 Food Security Meeting
- 3 NV Energy Meeting – Tulare Ag Show and Cal Tour
- 3 NNDA EB5 Meeting
- 3 Gov Staff Meeting
- 7 Vegas Trip – Visit Staff and Three Square Food Bank
- 7 Dept Director DETR
- 8 Ag Research Interviews
- 9 State Environmental Commission
- 9 Brand District Lines Meeting, JJ and Doug
- 10 Sagebrush Council Meeting
- 10 Cabinet Meeting
- 10 Food Summit Planning
- 11 Sagebrush Council Meeting
- 14 Plant Ind Meeting
- 14 Presented to CPM
- 14 Travel to Vegas
- 15 Clark County Centralized Kitchen Tour

- 15 Met with Vegas Staff
- 16 Pest Control Hearing
- 17 Tour NV Ag Greenhouses
- 17 Pest Fee Increase
- 22 IFC
- 22 LCB Commission on Regs
- 23 Ag Report Meeting
- 24 NV Energy Ag Processing Meeting
- 29 Reno Nevada Weed Association Meeting
- 29 Deputy Superintendent Jeremy Hauser Clark County SD
- 31 NDA Halloween Party

November

- 5 Seamless Summer Meeting – Clark County
- 6 NV Grown Board Meeting
- 6 Mike Willden, First Lady Food Summit/Buy Nevada
- 6 HR Meeting in Carson
- 7 Food Processing & NV Ag Tour
- 7 LCB Tour of NDA
- 12 BOE Meeting Carson
- 12 NV Walmart Meeting
- 13 Food Bank & NDA Meeting
- 14 FFA Foundation meeting
- 14-16 NV Cattlemen's Meeting
- 18 Sagebrush Meeting
- 19 Gov Econ Team Meeting
- 19 GWIB Ag Sector Meeting
- 20-23 NV Farm Bureau – Vegas
- 20 NDA Southern Ag Conference

December

- 2 Mark Walker Meeting – Cooperative Food Processing
- 3 Drive to Vegas
- 4 NAAE Conf at Riviera Hotel
- 4 NDA Board Dinner
- 5 NDA Board Meeting
- 5 Gov Business Tours – Star Nursery
- 6 Anderson Dairy / Clark County Centralized Kitchen Tour

4

Administration

4A

Update to Board

4B

Public Information Requests Policy and Fee Schedule

(Attachments)

*Possible Action

NEVADA DEPARTMENT OF AGRICULTURE
PUBLIC RECORD REQUESTS
POLICY #AG-2-ADM-1

PURPOSE:

This policy establishes procedures for handling requests from the public for information, data, records, reports, and publications.

POLICY:

Information, data, and records of the Department, unless declared confidential by law, are public information. The information, data, and records will be made available for inspection by the public during normal business hours, Monday through Friday 8:00 a.m. to 5:00 p.m. Pursuant to NRS Chapter 239.0107, the Department will acknowledge receipt of a request and provide a status report to the requester within five business days.

SCOPE:

This policy applies to the Department of Agriculture.

REFERENCES:

Nevada Revised Statutes (NRS) 239, Nevada Administrative Code (NAC) 239, Nevada State Records and Retention Schedules

PROCEDURES:

1. Request for public records

A request may be made by telephone, mail, email, or delivered directly to the Department's Sparks headquarters office at:

Attn: Public Records Request
Nevada Department of Agriculture - Main Office
405 South 21st Street
Sparks, NV 89431

Concise, typewritten requests either by mail or e-mail are preferred. Handwritten requests must be legible.

A request should contain details regarding the records being requested, which will focus and expedite the records search. The request should also include the requester's contact information, preferably with email and physical mailing addresses and a daytime phone number.

2. Timeframe for Responding to a Request

Pursuant to NRS Chapter 239.0107, the Department will acknowledge receipt of a request and provide a status report to the requester within five business days. The agency's Public Information Officer or another appropriate Department of Agriculture employee will notify the requester when the material is ready for inspection. Inspection of such public records must take place in the Department's main office during normal business hours, Monday through Friday, 8:00 AM to 5:00 PM. If the requester asks for copies of specific documents while on site, copies will be made by Department staff and the requester will be charged per the Department's fee schedule.

Records are not always readily accessible and may be located in archived files. To save time, prior to visiting the office to see documents or files that may or may not be on-hand, the Department asks that a request be made by either a telephone call, letter or email before visiting the office.

Due to the volume of requests, records accessibility, staff availability, and legal constraints, the Department may need a few days or weeks to locate and produce requested records.

3. Confidential Records

Records may be deemed as confidential by the Department, the agency has the burden of establishing confidentiality, and must cite the appropriate legal authority for that confidentiality such as state or federal statute, court order, etc.

4. Protection of Original Documents

At no time should any person inspecting public records be allowed to remove original records from the premises or location stored. Reasonable steps shall be taken to ensure the protection of public records while being inspected including but not limited to supervision, viewing areas, and sign-in sign-out requirements.

5. Extraordinary use of personnel or resources

In accordance with NRS 239.055, if a request for copies or inspection of public books or records will require extraordinary use of personnel or technological resources, including the redaction of personal or other privacy protected information a government entity may charge a reasonable fee to comply with such an extraordinary request. If a fee is to be assessed, the requester will be notified.

6. Fees

The Nevada Department of Agriculture may charge for document searches, certification of documentation, copies and staff time in accordance with NRS 239.052 and 239.055. These fees will be posted in a conspicuous place in all Department offices. Posting and shipping costs will be reimbursed by the requester.

POLICY COMMUNICATION:

This policy will be made available to all employees within the Department of Agriculture and to the public.

DIRECTOR'S POLICY AUTHORIZATION:

Jim R. Barbee, Director

Date

APPROVED BY THE BOARD OF AGRICULTURE ON

Effective Date



Nevada Department of Agriculture Fee Schedule for Public Records Requests

1. **Invoices.** Any fees imposed must be invoiced and must detail each of the four costs: staff time, copies, scanning/e-mail/online posting, and postage.
2. **Cost estimates.** Before further processing, the requester will be notified in writing and required to remit payment in full. If the final costs are less than estimated, the requester will be reimbursed any difference.
3. **Staff time.** In accordance with Nevada Revised Statute 239.055, fees may be charged for extraordinary use of staff time for processing, researching, copying, legal/technical review, or viewing.
4. **Copying costs:**
 - Black & White: \$0.10 per page.
 - Color: \$0.50 per page.
 - Compact Disk/DVD: \$5 per disk.
 - Certified Copies: \$5 per page.
 - Electronic Scanning to E-mail, CD or FTP: \$0.10 per page.
5. **Postage/shipping.** All shipping will be via USPS unless otherwise requested. Postage and shipping costs will be reimbursed by the requester.
6. **Payment.** Checks or money orders must be payable to the "Nevada Department of Agriculture". Partial payment of estimated fees is required prior to commitment of substantial staff time and effort. Full payment of actual fees is required before any records will be provided.
7. **Use of outside copying services.** If estimated staff time exceeds four (4) hours, outside vendors/contractors may be utilized under the direction of the Department. Actual vendor costs in addition to staff time, if warranted, will be charged to the requester.

4C

Department Policy Adoption Changes and Updates to HR Policies 4 and 14

(Attachments)

*Possible Action(s)

4C

i.

Policy AG-1-HR 4 Furlough Leave

(Attachment)

*Possible Action

NEVADA DEPARTMENT OF AGRICULTURE
FURLOUGH LEAVE
POLICY #AG-1-HR-4

PURPOSE:

This policy establishes procedures for employees and supervisors, in regard to the use of furlough leave, to include guidelines and explanation of the requirements and conditions in an effort to ensure understanding and statutory compliance.

POLICY:

It is the policy of the Department of Agriculture to ensure all employees of the Department use and report the required hours of furlough leave in a responsible and informed manner. All employees and supervisors will receive a copy of this policy and are expected to follow the procedures and requirements set forth within.

SCOPE:

This policy applies to all departmental employees, unless specifically exempted by the Board of Examiners.

REFERENCES:

Nevada Revised Statutes (NRS) 284.065 and 284.345; Nevada Administrative Code (NAC) 284.531 and Nevada Employee Action and Timekeeping System (NEATS).

FORM:

As currently provided by the Division of Human Resource Management, NEATS and the Department of Agriculture.

RESPONSIBILITY:

1. Agency Human Resource Services (AHRS) shall be responsible for:
 - a. Providing assistance to supervisors and employees in the interpretation and explanation of this policy and NAC 584.531.
2. Each Division Administrator is responsible for:
 - a. Ensuring that their division employees and supervisors comply with this policy and that no exceptions are granted to this policy unless written approval is granted by the Director and/or the Board of Examiners.
 - b. Providing a quarterly report to the Director that reflects Division compliance with this policy.

3. Supervisors are responsible for:
 - a. Working with each employee to jointly determine, in advance, a schedule for taking furlough leave during the fiscal year.
 - b. Ensuring all employees are taking unpaid furlough leave in compliance with state regulations and Department policy.
4. Employees are responsible for:
 - a. Working with the supervisor to jointly determine, in advance, a schedule for taking the required furlough leave during the fiscal year.
 - b. Monitoring their time to ensure they have taken the required hours of furlough leave in compliance with state regulations and department policy.

PROCEDURES:

Use of Leave:

1. A furlough is the placement of an employee on leave without pay. While in furlough status, employees will not receive any type of pay, such as base, added regular time pay, overtime, compensatory time, salary adjustment (5%), shift differential, catastrophic leave, or any other type of compensation.
2. Overtime pay, compensatory time earned, or added regular time (for part-time employees) shall not be allowed in the same workweek as unpaid furlough leave unless approved in advance by the Administrator of the Division of Human Resource Management and the Director of the Department of Administration or their designated representatives.
3. A full-time employee, unless exempted by the Board of Examiners, is required to take the equivalent of 4 hours of furlough leave for each full month in the fiscal year.
4. Part-time and intermittent employees, unless exempted by the Board of Examiners, must take the equivalent of the portion of 4 hours of furlough leave for each full month in the fiscal year that is proportional to the average number of hours worked.
5. No employee may take more than 12 hours of furlough in a workweek.
6. Furlough time should be taken in no less than 1 hour increments, except as is necessary to reduce furlough in a week where other pay status requires an adjustment, i.e. overtime worked, or as otherwise directed by the appointing authority. Example: An employee takes 1 hour of furlough on a Monday and works 30 minutes over their scheduled shift on Friday of the same pay week; the furlough time needs to be reduced to 30 minutes that week, and the employee now needs to record the other 30 minutes of furlough in another workweek.

7. Employees that are exempt from receiving overtime must take unpaid furlough leave in increments of not less than 8 hours.
8. Overtime exempt employees must be mindful of the fact that during the week in which furlough leave is taken, the employee is paid on an hourly basis. A full-time employee must not work more than 32 hours in the week in which they take an 8 hour furlough leave.
 - a. If a situation arises in the week in which a furlough day is taken and the exempt employee must work more than the 32 hours, the furlough time must be reduced.
 - b. Additionally, if leave is taken in the same week as furlough that is less than a full work day, it must also be reported. Example: The exempt employee has a furlough on Monday and on Wednesday he has a dental appointment that takes 2 hours; he must report the two hours of sick leave.
 - c. If an exempt employee takes furlough in a holiday week and then needs to work on a holiday, then the furlough leave must be changed to annual leave to prevent holiday premium pay liability.
9. No work of any kind may be performed during the time to be considered in unpaid furlough status. This includes work at home, monitoring e-mails, telephone messages, and responding to inquiries from work.
 - a. Any requirement for the employee to work on a furlough day will result in the employee's time being adjusted.
 - b. If an employee takes furlough leave and subsequently needs to work additional hours, the employee will adjust days or hours worked. Example: 8 hours of furlough is taken on Monday and 6 hours are worked the following Saturday; the employee will reduce the furlough leave to 2 hours on Monday and record 6 straight time hours on Saturday. In this situation, an employee, including exempt employees, will need to have a signed variable workweek agreement on file.
10. Paid leave time may not be substituted for a furlough leave day (e.g., an employee is scheduled for a furlough day and becomes ill, the furlough cannot be changed to reflect sick leave). Furlough leave may not be substituted when an employee does not have sufficient accrued sick leave or annual leave to cover an absence unless pre-approved by the employee's supervisor. Furlough leave may not be substituted for AWOL hours.

11. Employees who are on extended leave are not exempt from the requirement to take furlough leave. Therefore, an employee on catastrophic leave, FMLA leave, administrative leave, or workers' compensation leave is also required to record the appropriate amount of furlough leave.
12. Using furlough leave to "fill in" periods of tardiness will not be permitted under any circumstances. A last-minute request to use furlough in order to leave early for the day will be at the discretion of the employee's supervisor, and approval will depend upon workload and staffing.
13. To ensure appropriate staffing levels are maintained while also ensuring furloughs are taken, the supervisor may require an employee to take furlough leave at a specific day or at a specific time, or both.
14. Supervisors and Division Administrators should ensure an employee makes every effort to reduce their excess annual leave to prevent forfeiture or payment of excess annual leave and also use the appropriate amount of unpaid furlough leave.

Beginning/Ending Dates of Furlough Requirement:

1. Transfers In and New Hires:
 - a. The requirement to take furlough leave begins the first full month of employment (e.g., an employee beginning employment on July 1st will be required to take furlough in July; if employment begins on July 2nd, the employee's first furlough begins in August).
 - b. The amount of furlough time an employee has to take upon hire or transfer is determined as follows: the requirement for a full-time employee will be equivalent to 4 hours per month (48 hours in a fiscal year). An employee beginning work on August 15th, would start a furlough requirement in September (removing July & August) and be required to take 40 hours for the remaining fiscal year (part-time employees would take a proportionate amount of time).
 - c. If an employee transfers from another state agency, he or she would only be responsible for taking the remaining amount of furlough leave not taken at the previous agency.
2. Transfers Out or Terminated Employees:
 - a. An employee who is transferring out or terminating may have taken a furlough day prior to his or her last day of employment. The employee will not be reimbursed for the amount represented by the furlough leave, even if the employee only worked for a partial month as no work was performed during furlough leave.

- b. If an employee leaves a position prior to taking furlough leave for the period, the position must remain vacant a sufficient period of time to achieve the corresponding amount in salary savings.
- c. If an employee transfers to a different agency and has already taken the appropriate amount of furlough leave for the period, the employee will not be required by the receiving agency to take additional furlough leave in the same period.

Approval/Documentation:

- 1. Furlough leave must be requested and approved prior to being taken. The employee will submit the furlough requests through NEATS by using the Leave Request link.
- 2. The supervisor approves the request in NEATS, after ensuring the request will not create: a) conflict with the employee's reporting hours (not to exceed 40 hours in week furlough is taken); or b) problems with workload or staffing.
- 3. To ensure staffing levels and ensure that furloughs are taken, the appointing authority may require adjustments to the employee's request.
- 4. Any adjustments to the employee's request or changes in the furlough scheduled should be documented in NEATS.
- 5. All supervisors should track and document furlough time scheduled for all employees under their supervision.

Reporting:

- 1. Furlough leave will be reported by the employee in NEATS. The employee must report the furlough hours taken as outlined in this policy, coded as (UFRLO).
- 2. The Division Administrator will provide a quarterly report to the Director that reflects Division compliance with this policy. This report will show documentation that adequate amounts of furlough are being taken quarterly by each employee and that a plan to take furlough leave is in place to ensure that employees are systematically reducing their furlough leave requirement.

Furlough Leave Considered Time Worked on All Other Employee Accounts:

Except for payment of salary and determination of overtime, or if otherwise provided by any regulations that may be adopted by the Personnel Commission, an employee who is on furlough leave is considered to have worked that day or portion of a day, as applicable, for all other purposes and programs dealing with the employee, including but not limited to those listed in a through h below:

- a. Accrual of sick and annual leave;
- b. Determining an employee's pay progression date;
- c. Continuity of service and years of service relative to the longevity pay program;
- d. Duration of a probationary period;
- e. Determining eligibility for holiday pay;
- f. Seniority for all purposes, including layoffs;
- g. The Public Employees' Benefits Program; and
- h. The Public Employees' Retirement System

Since there is no reduction in retirement benefits due to furloughs, employees on the employee/employer compensation schedule shall be required to pay their portion of retirement for the unpaid furlough leave taken in a pay period. This amount will be deducted along with the regular retirement contribution on the employee's paycheck.

Unpaid furlough leave will be counted as time worked for the purpose of determining eligibility under the Family and Medical Leave Act (FMLA). Unpaid furlough leave taken during the time an employee is on FMLA leave will not be counted against the employee's 12-week FMLA entitlement.

Consequences of Non-Compliance:

Every classified and unclassified employee is subject to unpaid furlough leave regardless of type of appointment or funding source of position.

Any employee refusing to take the unpaid furlough leave, will be required to take specific time off as designated by the appointing authority, and will be subject to disciplinary action. Additionally, failure to comply with or disregarding the provisions of this policy may result in disciplinary action.

Any exception request which deviates from this policy must be submitted to the Director 30 days in advance, as far as practicable.

POLICY COMMUNICATION:

All employees within the Department of Agriculture will receive a copy of this policy and will sign an acknowledgement that they have read and understand the conditions within. Employees needing clarification should contact an AHRS or the Division of Human Resource Management representative for more information. Any employee that refuses to sign the acknowledgement may be subject to disciplinary action.

DIRECTOR'S POLICY AUTHORIZATION:

Jim R. Barbee, Director

Date

APPROVED BY THE BOARD OF AGRICULTURE ON _____.
Effective Date

This policy is not a substitute for relevant law or regulation nor does it establish additional rights beyond those provided in law and regulation. This policy is intended to be used in conjunction with the state law and the Rules for State Personnel Administration (NRS & NAC 284).

4C

ii.

Policy AG-1-HR 14
Volunteer
Services

(Attachment)

*Possible Action

NEVADA DEPARTMENT OF AGRICULTURE
VOLUNTEER SERVICES
POLICY #AG-1-HR-14

PURPOSE:

To establish guidelines and procedures in the use of volunteer services to ensure all volunteers, supervisors and administrators are aware of all requirements of the Department, Risk Management Division and the State of Nevada.

POLICY:

It is the policy of the Department of Agriculture to encourage the use of volunteers within appropriate programs and activities to help accomplish Department goals and objectives.

SCOPE:

This policy applies to all volunteers placed with the Department of Agriculture and supervisors and management of the Department.

REFERENCES:

Nevada Revised Statutes (NRS) 41.0339, 239.010, 616A.130; the Division of Risk Management's Volunteer General Program Requirements and the Department of Agriculture's policies and procedures as they relate to volunteers.

FORMS:

As currently provided by the Division of Risk Management.

RESPONSIBILITY:

1. Volunteers shall be responsible for:
 - a. Reading, understanding and complying with the "Volunteer Responsibilities" section of this policy.
 - b. Reading, understanding and complying with the Department policies.
2. Each Supervisor shall be responsible for:
 - a. Orienting new volunteers and informing current volunteers periodically of the content and intent of this policy.
 - b. Keeping appropriate documents and records for each volunteer.
 - c. Tracking and documenting time worked by each volunteer.
 - d. Update Volunteer/Intern/Inmate Roster monthly or as requested.
3. Agency Human Resource Services (AHRS) shall be responsible for:

- a. Providing assistance to supervisors and volunteers in the interpretation and explanation of this policy and Risk Management requirements.

PROCEDURES:

1. **Recruitment of Volunteers:** The recruitment of volunteers can be done throughout the year or on an as-needed basis as deemed necessary by the Division Administrator with the approval of the Director or his designated representative. Recruitment may be done through staff, outreach, or other volunteer programs. Family members of current staff may volunteer. When family members are enrolled as regular volunteers, they should not be placed under the direct supervision of other family members. Volunteers must be at least 18 years of age.
2. **Screening and Selection:** All volunteers shall be interviewed to ensure suitability for and interest in the available position. The interview process should obtain information on the volunteer's qualifications and interests and their commitment to fulfill the requirements of the volunteer assignment.
 - a. If the volunteer work requires specific physical requirements, the supervisor should provide a copy of the essential functions required to perform the work of the position and the volunteer should sign the essential functions documenting that he or she is able to perform those essential functions.
 - b. The volunteer should provide a statement of any misdemeanor or felony convictions and moving traffic violations.
 - c. Interviews may be conducted by Division Administrators, supervisors, or any person designated by the Division Administrator.
 - d. The volunteer may be required to successfully pass a background check dependent upon the type of volunteer work being performed.
3. **Placement:** When placing a volunteer in a position, attention should be given to the interests and capabilities of the volunteer and the requirements of the position. No volunteer should be assigned to a "make-work" position and no position should be given to volunteer that is unqualified or uninterested in the specific type of work. All volunteer placements are done for an initial period of 30 days. At the end of the 30-day period, a review may be conducted in order to gauge the volunteer's performance and/or satisfaction with the assignment. (See Section 8, Volunteer Evaluations).
4. **Completion of Volunteer Paperwork:** The Division Administrator or supervisor responsible for consideration and placement of a volunteer shall ensure all required paperwork is completed, prior to the volunteer beginning work with the Department.
5. **Orientation and Training:** Volunteers will receive copies of all relevant Department policies, and procedures. They will be given a tour of the work site before beginning

work and receive specific on-the-job training from the direct supervisor. The direct supervisor will provide volunteers with the information, equipment and supplies needed to perform their work and to understand the program for which they are volunteering.

6. **Volunteer Rights:** Volunteers are a valuable resource and their contributions are extremely appreciated by the Department. Volunteers shall be given meaningful assignments, be treated fairly and consistently, receive effective supervision, have the right to involvement and participation, and be afforded recognition for work performed.

7. **Volunteer Responsibilities:**

- a. Volunteers shall not perform professional services for which certification or licensing is required unless currently certified or licensed to do so. If the volunteer is licensed, a copy of that certificate or license must be maintained by the Department. A volunteer cannot write interview notices, citations, or, do official identifications.
- b. Volunteers must not represent themselves as Department spokespersons to the media under any circumstances.
- c. Standard of Conduct: All communications and actions that volunteers make while providing service to the Department should be positive and in support of the department and its personnel.
- d. Time Accountability: It is critical that volunteers be present and on time for each Department event or activity for which they are scheduled. Volunteers shall agree to actively perform their duties to the best of their ability. If unable to be present when scheduled, the volunteer should contact their supervisor at least 24 hours in advance, when feasible.
- e. Alcohol and Drugs: Volunteers are prohibited from purchasing, transferring, using or possessing illicit drugs, alcohol, prescription drugs, or any other substances in any way that is illegal or that may impair the ability of the volunteer to perform his or her duties properly and safely.
- f. Safety: The Department is responsible for providing safe conditions for its volunteers. Volunteers are expected to follow all safety rules and procedures. Volunteers should pay particular attention to safety instructions and proper and safe use of equipment. Volunteers should notify their supervisor if they have a safety concern and report any injuries immediately to the person in charge.
- g. Conflict of Interest: No person who has a conflict of interest with any activity or program of the Department shall be accepted or be allowed to continue to serve as a volunteer. At time of placement, the supervisor should discuss this issue with the volunteer to determine either the possibility of any conflict or to inform the volunteer of what actions would be seen as conflicts with Department activities or

programs. The Department Policy on Ethical Behavior, although addressing state employment, may be used as a guideline. When there is a question, the Division Administrator or Director shall make the determination.

- h. Change of Status: Volunteers shall report to their supervisors any changes in status that may affect their ability to fulfill their duties. Examples of change of status include, but are not limited to: loss or suspension of driver's license, a medical condition, arrests, and criminal investigations.
- i. Dress Code: Volunteers shall conform to the Department approved dress code consistent with their duty assignment.
- j. Reimbursement of Expenses: Volunteers may be eligible for reimbursement of expenses incurred while working for the Department only with prior approval from his or her supervisor.

POLICY COMMUNICATION:

All volunteers with the Department of Agriculture will receive a copy of this policy upon placement and will sign an acknowledgement that they have read and understand the conditions within. Supervisors will ensure all assigned volunteers are aware of the requirements of this policy. Supervisors or volunteers needing clarification should contact AHRS, their supervisor, or their Division Administrator for more information.

DIRECTOR'S POLICY AUTHORIZATION:

Jim R. Barbee, Director

Date

APPROVED BY THE BOARD OF AGRICULTURE ON _____
Effective Date

This policy is not a substitute for relevant law or regulation nor does it establish additional rights beyond those provided in law and regulation. This policy is intended to be used in conjunction with the state law and the Rules for State Personnel Administration (NRS & NAC 284).

4D

Marketing &
Communications
Update

4E

Ag Report

4F

International Marketing Update

5

Plant Industry

5A

Update to Board

(Attachment)

NEVADA BOARD OF AGRICULTURE MEETING December 5, 2013

Plant Industry Programs Update

GENERAL ADMIN: Plant Industry has several new staff members: Rachel Bomberger is the new lab assistant to Dr. Wang in plant pathology. Robert Leavitt is replacing Lee Lawrence as the program manager for PCO licensing and enforcement program. Dameon Meeks is the new plant industry administrative assistant II. Ashley Jeppson has moved into an agriculturist 2 position to create/enhance USDA GAP (Good Agriculture Practices) audit program in anticipation of FDA produce rule requirements, as well as help in the organic program.

ENTOMOLOGY: Jeff Knight, Curtis Irwin, Jim York

Surveys for gypsy moth, light brown apple moth, brown marmorated stink bug, emerald ash borer, Asian citrus psyllid, Japanese beetle, and imported fire ant were completed for the year. None of the target pests were found. Exotic wood borer traps have been collected, but the 100 + samples are still being processed. Lectures were presented to: the advanced Master Gardner's training in Las Vegas (100+ attendees), Nevada Weed Management Association (30+), a local charitable organization on pollinators (28), and on small farm insect IPM was to a UNR class (15).

An aphid control issue in Dyer and a cutworm problem on teff in Fallon were investigated.

Two entomologists visited the collection and worked on their respective groups of insects. Several hundred specimens were identified and are being databased and incorporated into the collection.

Approximately 180 samples were submitted and completed for identification by the entomologist.

ENVIRONMENTAL COMPLIANCE: Charles Moses, Sean Gephart, Brett Allen

New Hire Bret Allen has completed nearly 75% of all ground water monitoring for the year. Additionally, he is working towards his EPA certification as an inspector and helped make strychnine paste this season.

EXPORT CERTIFICATION: Peggy McKie, Joe Starnes

As compared to the same month in 2012, there was a 40% increase in export certificates issued by Plant Industry ACOs in October 2013. Onion exports from Mason Valley constitute the majority of this increase.

GAP: Ashley Jeppson

One Gap Audit was performed during the last quarter. Outreach on GAP training opportunities was provided to 150 producers. Four producers received on-farm outreach on GAPs.

NOXIOUS WEEDS: Robert Little, Jamie Greer

--The proposed pesticide fee increase that will in part support noxious weed program related activities was has been approved and will be included in this January's registrations. This will allow the noxious weed program to have additional funding available for various activities next fiscal year.

--The issue of removing mayweed chamomile from the state prohibited seed list for Nevada will have a hearing in December. We anticipate many members of the public, weed groups and seed company will attend.

--The Noxious Weed Program staff has initiated reviewing and drafting changes to the state Noxious Weed statutes so that abatement funds can be effectively utilized.

--The NDA Noxious Weed Program has also begun drafting an MOU with Douglas County to strengthen relationship and abatement funding possibilities. --

--The NDA Noxious Weed Grants Program received another USFS Cooperative Weed Management Support Grant for federal fiscal year 2014. The Noxious Weed Program will release an RFP for local weed groups to apply for grant funds in January 2014.

--The Noxious Weed Free Certification Program saw an increase in producer participation all across the state. The certifications of gravel pits or earth materials providers went from 2 in 2012 to 6 in 2013. The number of forage producers increased from 19 to 22 from last year to this year. In total nearly 9,500 acres were inspected statewide. The Nevada Weed Free Certification Program will be formalizing its program policy. (This is an agenda item for approval in this board meeting).

NURSERY: Peggy McKie, Xenia Duranovic, Marlea Stout

The nursery program welcomes new hire Marlea Stout, Agriculturist II. Her duties will focus primarily on the nursery industry as well as issuing export certificates for all agricultural products. Marlea previously worked in NDA's entomology program and we are delighted to have her back after jobs with USDA's Agriculture Research Service and the Lahontan Conservation District.]

Nursery program manager and our inspector in Las Vegas is working with large box store to bring all of their stores into compliance with Nevada's laws for the labeling of nursery stock. The store's corporate headquarters is cooperating fully with NDA.

ORGANIC: Steve Marty

12 annual on-site organic inspections conducted.

16 annual on-site inspection reports reviewed.

3 new client applications reviewed.

2 enforcement actions undertaken.

OTHER GRANTS: Ashley Jeppson

--Farm to School

School Garden Food safety training was provided to 25 Future Farmer of America/Agriculture teachers. Four school garden food safety and nutrition training were provided in northern Nevada. Three trainings were provided to School Food Service Directors on how to incorporate local products into Nevada schools. Two school garden inspections were performed.

--Federal State Marketing Improvement Program:

Surveys were disseminated to the Hispanic community on whether they are interested in agriculture production, purchasing Nevada crops, and what resources they need in order to produce/purchase Nevada crops. A Spanish-language website was posted to provide educational materials pertaining to high desert agricultural practices. An ethnic crop trail was performed involving the cultivation of various ethnically specific crops in order to encourage agriculture production by the Nevada Hispanic community.

PCO LICENSING AND ENFORCEMENT: Robert Leavitt, Scott Cichowlaz, Kathleen Bednarz, Jay Steele, Suzanne Suter

The PCO Licensing and Enforcement Program welcomes Dr. Robert Leavitt as the new Program Manager. In addition, the program's main office moves from Sparks NDA headquarters to the Las Vegas office because most of the state's licensed pest control companies are in southern Nevada. Dr. Leavitt replaces Lee Lawrence who served as the Program Manager for many years and will be greatly missed as he graduates to retirement. Before retiring Lee Lawrence wrote his last Regulatory Update for the Nevada Pest Control Association News titled "Thank You" in which he discusses the growth of the pest control industry in Nevada over the past 24 years.

The PCO Licensing and Enforcement Program also welcomes a new Board of Agriculture member for pest issues, Mr. Brian Nakaguchi, from Paradise Termite and Pest Control. Mr. Nakaguchi replaces Mr. Grady Jones who served for several years with distinction.

Continuing Education in pests and pesticide regulations was provided for 200 people at the Univar Customer Appreciation Day and continuing education in Integrated Pest Management was provided for 90 people at the Desert Green conference. In addition, pest control continuing education deficiencies letters

were sent to pest control businesses in October. The pest control website has been updated with the latest continuing education information and with a mailing list for all licensed pest control companies.

Preparation for annual pest control operator re-licensing has begun. This includes updating the re-licensing forms to include Social Security numbers to comply with SB 21.

PLANT PATHOLOGY: Shouhua Wang, John Rolshoven, Rachel Bomberger
2013 USDA CAPS and Farm Bill surveys for a number of exotic or regulated pathogens and nematodes are being conducted. Hundreds of plant and soil samples were collected and are being analyzed in the laboratory. The laboratory also tested 119 tomato samples for beet curly top virus to address emerging disease problems associated with tomato crop. Shouhua Wang delivered a presentation to green industry professionals in October, which relayed many clinical cases from our diagnostic laboratory to the audience and helped them to understand plant diseases and disorders encountered in the state.

RODENT CONTROL PI produced 119 jugs (100 oz) of strychnine paste last month. We've had a difficult time acquiring raw strychnine the last 3 years and were only able to acquire 1/3 of what we usually buy. NDA has had the EPA label and product registered for just over twenty years. We will register the label this year again, but if we can't get the raw product by the end of February 2014 we will have to discontinue the program. There are alternatives that can be used for rodent control (fumigation, strychnine on grain/wheat, PVC traps) and if we have to stop production we will ramp up education on alternatives.

SEED CERTIFICATION

2,153 acres alfalfa and 1,128 acres small grains accepted as certified seed based on field inspection and laboratory analysis.

256 acres potato seed accepted as certified seed based on field inspection and laboratory analysis. Certification status pending winter grow-out analysis.

SPECIALTY CROP BLOCK GRANT Made thirteen sub-award grants with individuals, academia and other entities for specialty crop enhancing projects.

INTERNATIONAL/ECONOMIC DEVELOPMENT: Jeff Sutich

This program works with companies within the food and agriculture sector through export training and awareness, trade show support, inbound trade missions, outbound trade missions, marketing, and economic development. In the last quarter the NDA has developed a brand called "Buy Nevada" to assist in the promotion and education of the Nevada food and agriculture sector.

Nature's Bakery, Nevada Vines and Wines, Nevada Ag Inc, and Native American Pharmacy have been assisted in either expanding their current operations or supported in developing new opportunities.

In mid November seven European buyers were brought to Las Vegas via the Western United States Agricultural Trade Association (WUSATA) to meet with companies. From these meetings there is a strong sense that new contracts will be made within the next six months between European buyers and Nevada companies. M 2 Ingredients is a California company that attended the trade mission and had very productive meetings with the European Buyers. They are planning on moving their future operations to Washoe County as they expand. In mid November a Southern Nevada Agriculture Conference will take place to support the promotion and development of the food and agriculture sector.

5B

Request Permission
to go to workshop
and hearing to
change temporary
regulation to
permanent regulation

*Possible Action

**PROPOSED REGULATION OF THE
STATE QUARANTINE OFFICER**

LCB File No. R019-13

July 31, 2013

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1 and 2, NRS 561.153 and 587.360.

A REGULATION relating to agriculture; revising provisions concerning certain certifications relating to agricultural products and farm equipment; and providing other matters properly relating thereto.

Section 1. NAC 587.340 is hereby amended to read as follows:

587.340 1. The fees for the inspection and certification of potatoes at their point of shipping will be determined by agreement between the State Quarantine Officer and the processor of the potatoes. If those fees will exceed \$2,000 in a 30-day period, the processor of the potatoes must provide to the Department a surety bond or another form of security that is satisfactory to the Director to guarantee the payment of the fees for the 30-day period immediately succeeding the date the security is provided. The fees will not be less than:

- (a) The actual cost of providing the inspection and certification services; and
- (b) The fee charged in accordance with the contract between the Department and the Federal Government for certifying that the potatoes comply with the standards and conditions established by the Federal Government.

2. The fees for inspection, grading or certification of other agricultural products:

or of a foreign country before those agricultural products may be exported to that state or country, the State Quarantine Officer will impose a fee of \$7 per acre for the inspection.

6. If the State Quarantine Officer or his or her designee issues a phytosanitary certificate, an export certificate for processed plant products, *a certificate of origin*, or a free-sale certificate as required by the government of a state or of a foreign country before agricultural products *or farm equipment* may be exported to that state or country, the State Quarantine Officer:

(a) Will impose a fee of \$25 ~~{if the shipment of agricultural products is made for commercial purposes;}~~; and

(b) ~~{Will not impose a fee if the shipment of agricultural products is made for noncommercial purposes; and}~~

~~{(c)}~~ Will impose any fee required to be collected and passed through to the United States Department of Agriculture.

7. As used in this section:

(a) “*Certificate of origin*” means a certificate which certifies that the shipment of agricultural products or farm equipment, or any combination thereof, originated in the State of Nevada and that the agricultural products or farm equipment, or combination thereof, is free from infestation in accordance with NRS 561.147.

(b) “Export certificate for processed plant products” has the meaning ascribed to it in 7 C.F.R. § 353.1.

~~{(b)}~~ (c) “Free-sale certificate” has the meaning ascribed to it in paragraph ~~{(c)}~~ (d) of subsection 4 of NAC 587.345.

~~{(c)}~~ (d) “Phytosanitary certificate” has the meaning ascribed to it in NRS 555.23575.

(b) “Export certificate for processed plant products” has the meaning ascribed to it in 7 C.F.R. § 353.1.

~~{(b)}~~ (c) “Federal phytosanitary certificate” means a phytosanitary certificate issued pursuant to federal law.

~~{(e)}~~ (d) “Free-sale certificate” means a certificate that certifies that the plants or plant products being exported are the same type of plants or plant products freely marketed and for sale in the State of Nevada.

~~{(d)}~~ (e) “State phytosanitary certificate” means a phytosanitary certificate that documents the origin and, if required, the inspection of plants and unprocessed or unmanufactured plant products that do not qualify for a federal phytosanitary certificate.

5C

Request Board
Approval
Nevada
Weed Free
Certification
Program

(Attachments)

*Possible Action

Nevada Department of Agriculture
Nevada Weed Free Certification Program
December 5, 2013 Board Meeting

The Nevada Department of Agriculture (NDA) Board will be asked to formally approve the policy of the NDA Weed Free Certification Program to be the following:

The NDA Weed Free Certification Program adopts and follows the North American Invasive Species Management Association's (NAISMA) minimum standards for certification of forage and gravel/earth materials as weed free. For clarification, program participants will be given a Nevada Weed Free Certification Program Guidelines document at the start of each season and will be expected to agree to follow all requirements of the program per NAISMA standards and guideline documents.

It should be noted that the NDA Weed Free Certification Program has operated under the NAISMA standards since its existence, but due to the changes in the NAISMA organization and the need for formalization of requirements for Nevada producers the NDA Weed Free Certification Program Coordinator now asks the boards official approval before the 2014 growing season.

The NDA board has been provided the NAISMA standards documents for forage and gravel/earth materials certifications prior to the meeting as attachments to this document.

ATTACHMENT I – NAISMA Forage Certification Minimum Standards
ATTACHMENT II – NAISMA Gravel Certification Minimum Standards

NORTH AMERICAN WEED FREE FORAGE PROGRAM
(Formerly *REGIONAL WEED FREE FORAGE*)
MINIMUM CERTIFICATION STANDARDS

Revised 1-24-97, 9-16-97, 8-9-99, 10-30-02, 10-20-03, 9-21-04, 10-5-05, 10-18-06

INTRODUCTION

There is a growing demand in North America for the use of certified weed free forage and mulch as a preventative program in integrated Weed Management Systems to limit the spread of noxious weeds. The goal of this standard is to provide a guideline to set minimum requirements for uniform participation of the various provinces and states in the program.

The standards are designed

- to provide some assurance to all participants that forage certified through this program meets a minimum acceptable standard.
- to provide continuity between the various provinces and states in the program.
- to limit the spread of noxious weeds through forage and mulch.

MINIMUM STANDARDS

Forage shall be free of those noxious weeds or undesirable plant species identified in Appendix A and those weed declared noxious within the state of origin.

1. Forage shall be inspected in the State/Province of origin by proper officials or authority.
2. Forage shall also be inspected in the field of origin (field shall include surrounding ditches, fence rows, roads, easement, rights-of-way, or a buffer zone surrounding the field.)
3. Field shall be inspected prior to cutting or harvesting by the proper officials or authority.
4. Forage which contains any noxious weeds, or undesirable plant species, as identified in Appendix A, may be certified if the following requirements are met:
 - a. Field upon which the forage was produced was treated to prevent seed formation or seed ripening to the degree that there is no danger of dissemination of the seed, or any injurious portion thereof from such noxious weeds, or undesirable plant species, or the propagating parts of the plant are not capable of producing a new plant.
 - b. Noxious weed(s) or undesirable plant species was treated not later than rosette to bud stage, or boot stage for grass species classified as weeds, prior to cutting or harvesting.
 - c. Treatment method can include but is not limited to: 1) burning, 2) mowing, cutting or roguing, 3) mechanical methods, or 4) chemicals.

5. An inspection certificate (Appendix B) shall document that the above requirements have been met (1..4) based upon a reasonable and prudent visual inspection as outlined in Appendix E
6. Interstate shipment of forage shall be accompanied by an original transit certificate (Appendix C) issued by proper officials or authority in the state/province of origin. Shipments into restricted areas not accompanied by the proper transit certificate may be rejected. Use of the standard North American certification marking is recommended (Appendix D).
7. Pellets and pelleted milled feeds may be certified in the field or may be certified based on official testing by a state/province seed lab for weed seed viability. Proof of results shall be submitted to the State/Province Department of Agriculture.
8. Using a transit certificate or certification marking for forage from fields other than the one specified shall constitute a violation of the North American Weed-Free Forage Standards and local authorities may take actions.

Disclaimer: North American Forage Certification Standards may not meet the forage quality standards adopted by the Hay Marketing Task Force of the American Forage and Grassland Council.

Attached as part of the North American forage certification standards is the North American Designated Noxious Weed list (Appendix A). **For additional information, contact the North American Weed Management Association, Phone: 970-8871228; Fax: 970-8879560.**

Appendix A: North American Designated Noxious Weed List or Undesirable Plant Species List
Appendix B: Inspection Certificate Standards
Appendix C: Transit Certificate Standards
Appendix D: Certification Markings
Appendix E: Field Inspection Standards
Appendix F: Definitions
Appendix G: Amendments To The North American Weed List
:

Appendix A: North American Noxious Weed List

Revised: 1-24-97, 4-20-97, 9-16-97, 10-30-02, 10-05-05, 10-09-09

North American Weed Free Forage Certification Standards Designated Noxious Weed List or Undesirable Plant Species List

Absinth wormwood (*Artemisia absinthium*)
Bermudagrass (*Cynodon dactylon*)
Buffalobur (*Solanum rostratum*)
Canada thistle (*Cirsium arvense*)
Common burdock (*Arctium minus*)
Common crupina (*Crupina vulgaris*)
Common tansy (*Tanacetum vulgare*)
Dalmatian toadflax (*Linaria dalmatica*)
Diffuse knapweed (*Centaurea diffusa*)
Dyers woad (*Isatis tinctoria*)
Field bindweed (*Convolvulus arvensis*)
Hemp (marijuana) (*Cannabis sativa*)
Henbane, Black (*Hyoscyamus niger*)
Hoary cress (*Cardaria spp.*)
Horsenettle (*Solanum carolinense*)
Houndstongue (*Cynoglossum officinale*)
Johnsongrass (*Sorghum halepense*)
Jointed goatgrass (*Aegilops cylindrica*)
Leafy spurge (*Euphorbia esula*)
Matgrass (*Nardus stricta*)
Meadow knapweed (*Centaurea pratensis*)
Medusahead (*Taeniatherum caput-medusae*)
Miliun (*Milium vernale*)
Musk thistle (*Carduus nutans*)
Orange hawkweed (*Hieracium aurantiacum*)
Oxeye daisy (*Chrysanthemum leucanthemum*)
Perennial pepperweed (*Lepidium latifolium*)
Perennial sorghum (*Sorghum almum*)
Perennial sowthistle (*Sonchus arvensis*)
Plumeless thistle (*Carduus acanthoides*)
Poison hemlock (*Conium maculatum*)
Puncturevine (*Tribulus terrestris*)
Purple loosestrife (*Lythrum salicaria*)
Quackgrass (*Agropyron repens*)
Rush skeletonweed (*Chondrilla juncea*)
Russian knapweed (*Centaurea repens*)
Scentless chamomile (*Matricaria perforata* or *M. milaceum*)
Scotch broom (*Cytisus scoparius*)

Scotch thistle (*Onopordum acanthium*)
Sericea Lespedeza (*Lespedeza cuneata*)
Silverleaf nightshade (*Solanum elaeagnifolium*)
Skeletonleaf bursage (*Ambrosia tomentosa*)
Spotted knapweed (*Centaurea maculosa*)
Squarrose knapweed (*Centaurea virgata*)
St. Johnswort (*Hypericum perforatum*)
Sulfur cinquefoil (*Potentilla recta*)
Syrian beancaper (*Zygophyllum fabago*)
Tansy ragwort (*Senecio jacobaea*)
Toothed spurge (*Euphorbia dentata*)
Wild oats (*Avena fatua*)
Wild proso millet (*Panicum miliaceum*)
Yellow hawkweed (*Hieracium pratense*)
Yellow starthistle (*Centaurea solstitialis*)
Yellow toadflax (*Linaria vulgaris*)

Forage (feed, hay, straw or mulch) will be inspected in the field or origin (field will include ditches, fence rows, roads, easement, right-of-way, or buffer zone, surrounding the field). Field will be inspected for the fifty-four (54) weed species listed above prior to cutting or harvesting.

Appendix B: Inspection Certificate Standards

Revised 1-24-97, 10-30-02

Certificate' of Inspection Minimum Requirements:

1. State agency information (address and phone number).
2. County agency information (address and phone number).
3. Inspection Certificate numbering system.
4. Producer name, address, and phone number.
5. Legal description of property being inspected or field number.
6. Acres inspected.
7. Package/Bale size.
8. Number of bales or tonnage.
9. Commodity/Forage type.
10. **"Meets North American Standards"** statement.
11. Inspection date.
12. Inspector signature.
13. Comment section.

Appendix C: Transit Certificate Standards

Revised 1-24-97, 10-20-03

Transit Certificate Minimum Requirements:

1. State agency information (address and phone number).
2. County agency information (address and phone number).
3. Transit Certificate numbering system.
4. Transporter name, address, phone number.
5. Consignee name, address, phone number.
6. Specific destination.
7. Reference to Inspection Certificate number.
8. Comments section.
9. Commodity/Forage type.
- 10 Package/bale size.
- 11 Number of bales or tonnage.
- 12 Type of Certification Marking used.
- 13 Issuer signature, Title, and phone number.
- 14 Issue Date
- 15 Statement: **"Only original are accepted"**.

Appendix D: Certification Marking

Revised 1-24-97, 10-30-02, 10-20-03, 5-15-08

A. Special purple and yellow colored twine as approved by NAWMA.

B. Galvanized baling wire.

C. Forage Tag Minimum Requirements:

1. The words - **"North American Weed Free Forage Certification Program"**.
2. A number system (for tracking purposes).
3. Province/state of issue.
4. Province/state telephone number (responsible official).
5. A statement that the product is **"Certified to the North American Standards"**.

Appendix E: Field Inspection Standards

Revised 1-24-97

Minimum Guidelines For Field Inspections:

The inspector will follow the following inspection procedures:

1. There shall be a minimum of two entry points per field.
2. There shall be minimum of one entry point per each 10 acres.
3. Each point of entry shall be at least 150 feet into the field, and each additional 150 feet traveled shall constitute an entry point. Travel shall be uninterrupted, proceeding through the field being inspected.
4. The entire field border shall be walked or driven.
5. Fields shall be inspected within 10 days prior to harvest.
6. The storage area shall also be inspected and meet the standards.
7. An inspector may not inspect fields of which said inspector has ownership or financial interest.

Appendix F: Definitions

Revised 1-24-97, 10-30-02, 5-15-08

1. Certification Markings - tags, purple and yellow colored twine, and galvanized wire.
2. Cubes - hay harvested with equipment which forms the hay into small compact self-binding units. These are not considered pellets as defined in this document and therefore the field of origin must be certified.
3. Forage - hay, straw, mulch, cubes, feed grain and pellets.
4. Noxious Weeds - those weeds including any weed seed or propagative plant parts, designated by the North American Weed Free Forage Committee.
5. Pellets - agglomerated feed formed by compacting and forcing through die openings by a mechanical process. If heat is not used in the process, the field of origin must be certified.
6. Proper official/authority
 - A. Representative of that State's Dept. of Agriculture
 - B. Weed Supervisor or Weed Superintendent
 - C. University Extension Agent
 - D. An individual designated by that State's law or regulations. This individual will be trained and certified in accordance with the state's/province's standard operating procedures.

Appendix G: Amendments To The North American Weed List.

Revised 9-16-97, 10-30-02

The following procedures should be followed for the addition or deletion of species to the North American Weed List.

Criteria for species considered for the North American list.

1. Identified as a problem or potential problem by a state/ province.
2. A petition be sent to the WFF committee from a state/ province Department of Agriculture or other authority for noxious weeds requesting listing to the North American Weed List.
(Petition should contain a risk assessment with information on impacts to natural resources and forage resources at state/province and/or regional level).

Species considered for deletion should show why the species is no longer a problem using criteria of #2 above.

Procedures for listing a species.

1. Petitioner send copy of the request to add or delete a species to the WFF Committee chairman 90 days before the WFF Committee Meeting.
2. Request should include a risk assessment on impacts to natural resources and forage resources, a description of the plant and 3 color slides (Kodachrome 64 if possible).
3. The WFF Committee Chairman will mail information packets to committee members 60 days in advance of the committee meeting.
4. The proposed species should be listed in the NAWMAlogue and also on the NAWMA Home Page before the committee meeting. Comments will be sent to the WFF chairperson for review prior to committee meetings.

Gravel pit minimum standards

Gravel/borrow area shall be free of those noxious weeds or undesirable plant species identified in the following list and those weeds declared noxious within the state of origin.

1. Gravel/borrow material shall be inspected in the State/Province of origin by proper officials or authority.
2. Gravel/borrow material shall also be inspected in the area of origin (area shall include, but not limited to, surrounding ditches, top soil piles, gravel/sand piles, fence rows, roads, easement, rights-of-way, working areas, storage areas, and a buffer zone surrounding the area.)
3. Gravel/borrow material shall be inspected prior to movement by the proper officials or authority.
4. Gravel/borrow area which contains any noxious weeds, or undesirable plant species, as identified in the following list, may be certified if the following requirements are met:
 - a. Area upon which the gravel/borrow material was mined was treated to prevent seed formation or seed ripening to the degree that there is no danger of dissemination of the seed, or any injurious portion thereof from such noxious weeds, or undesirable plant species, or the propagating parts of the plant are not capable of producing a new plant.
 - b. Noxious weed(s) or undesirable plant species was treated not later than rosette to bud stage, or boot stage for grass species.
 - c. Treatment method can include but is not limited to: 1) burning, 2) mowing, cutting or rouging, 3) mechanical methods, or 4) chemicals.
5. An inspection certificate shall document that the above requirements have been met based upon a reasonable and prudent visual inspection.

Minimum Guidelines for gravel/borrow material inspections:

The inspector will follow the following inspection procedures:

1. The entire border shall be walked or driven.
2. All storage areas, gravel/sand piles shall also be inspected and meet the standards.

3. Around all equipment, crushers, and working areas must be inspected to meet the standards.
4. Areas shall be inspected regularly at least twice a year in the growing season.
5. An inspector may not inspect gravel/borrow material of which said inspector has ownership or financial interest.

North American Weed Free Forage Certification Standards List

Absinth wormwood	<i>Artemisia absinthium</i>
Bermudagrass	<i>Cynodon dactylon</i>
Buffalobur	<i>Solanum rostratum</i>
Canada thistle	<i>Cirsium arvense</i>
Common burdock	<i>Arctium minus</i>
Common crupina	<i>Crupina vulgaris</i>
Common tansy	<i>Tanacetum vulgare</i>
Dalmatian toadflax	<i>Linaria dalmatica</i>
Diffuse knapweed	<i>Centaurea diffusa</i>
Dyers woad	<i>Isatis tinctoria</i>
Field bindweed	<i>Convolvulus arvensis</i>
Hemp (marijuana)	<i>Cannabis sativa</i>
Henbane, Black	<i>Hyoscyamus niger</i>
Hoary cress, (Whitetop)	<i>Cardaria spp)</i>
Horsenettle	<i>Solanum carolinense</i>
Houndstongue	<i>Cynoglossum officinale</i>
Johnsongrass	<i>Sorghum halepensis</i>
Jointed goatgrass	<i>Aegilops cylindrica</i>
Leafy spurge	<i>Euphorbia esula</i>
Matgrass	<i>Nardus stricta</i>
Meadow knapweed	<i>Centaurea pratensis</i>
Medusahead	<i>Taeniatherum caput-medusae</i>
Milium	<i>Milium vernale</i>
Musk thistle	<i>Carduus nutans</i>
Orange hawkweed	<i>Hieracium aurantiacum</i>
Oxeye daisy	<i>Chrysanthemum leucanthemum</i>
Perennial pepperweed	<i>Lepidium latifolium</i>
Perennial sorghum	<i>Sorghum almum</i>
Perennial sowthistle	<i>Sonchus arvensis</i>
Plumeless thistle	<i>Carduus acanthoides</i>
Poison hemlock	<i>Conium maculatum</i>
Puncturevine	<i>Tribulus terrestris</i>
Purple loosestrife	<i>Lythrum salicaria</i>
Quackgrass	<i>Agropyron repens</i>

Rush skeletonweed
Russian knapweed
Scentless chamomile
Scotch broom
Scotch thistle
Sericea Lespedeza
Silverleaf nightshade
Skeletonleaf bursage
Spotted knapweed
Squarrose knapweed
St. Johnswort
Sulfur cinquefoil
Syrian beancaper
Tansy ragwort
Toothed spurge
Wild oats
Wild proso millet
Yellow hawkweed
Yellow starthistle
Yellow toadflax

Chondrilla juncea
Centaurea repens
Matricaria perforata or *M. milaceum*
Cytisus scoparius
Onopordum acanthium
Lespedeza cuneata
Solanum elaeagnifolium
Ambrosia tomentosa
Centaurea maculosa
Centaurea virgata
Hypericum perforatum
Potentilla recta
Zygophyllum fabago
Senecio jacobaea
Euphorbia dentata
Avena fatua
Panicum miliaceum
Hieracium pratense
Centaurea solstitialis
Linaria vulgaris

6

Consumer Equitability

6A

Update to Board

6B

Manganese
LCB R189-2
NAC 590.090.131

(Attachments)
*Possible Action

1

**Open Meeting-
Call to order by
Chairman
Stix**

BRIAN SANDOVAL
Governor

STATE OF NEVADA

JAMES R. BARBEE
Director



Las Vegas Office:
2300 McLeod Street
Las Vegas NV 89104-4314
(702) 668-4590
Fax (702) 668-4567

Elko Office:
4780 E. Idaho Street
Elko NV 89801-4672
(775) 738-8076
Fax (775) 738-2639

DEPARTMENT OF AGRICULTURE

405 South 21st Street
Sparks, Nevada 89431-5557
Telephone (775) 353-3601 Fax (775) 353-3661
Website: <http://www.agri.nv.gov>

November 20, 2013

For the Board of Agriculture

Purpose: Recommend Board of Agriculture adopt the revised LCB File No. R189-12.

NOTE: This action must be completed on December 5, 2013. This adoption paperwork must be submitted to the Legislature by the end of December 6, 2013.

The 77th Legislative Session addressed the manganese fuel additive labeling issue and passed the Senate Bill 433 (SB 433) requiring the Board of Agriculture (BOA) to adopt a corresponding regulation. Refer to Tab A for a copy of the SB 433. The Nevada Department of Agriculture (NDA) was approved by the BOA to conduct workshops and a hearing; the revised LCB File #R189-12 contains the resulting proposed regulation. Refer to Tab B for a copy of the revised LCB File #R189-12.

Attached for review are the minutes of the SB 433 workshop held October 2, 2013 (see Tab C) and the minutes of the SB 433 hearing held on November 4, 2013 (see Tab D). During those public meetings the following salient comments, issues and concerns were stated:

1. Bills of Lading – Fuel industry requested that bills of lading be the specified transfer document used from suppliers to retailers.
2. Enforcement – The Fuel industry requested NDA enforce SB 433' laws and develop further procedures to enforce, and, develop methods to test fuel containing manganese.
3. Six Month Labeling Requirement – The Fuel and Chemical industries expressed a concern that the proposed regulation does not allow retailers to remove the label before six months should the retailer purge the fueling storage tank.
4. "Warning" versus "Attention" label wording – The Fuel and Chemical industries prefer the word "Attention" on the label as opposed to Warning. The Auto industry is satisfied with Warning.
5. New Regulation Communications – The Fuel industry surfaced a concern as to who should communicate the new regulation to refiners, distributors, resellers and retailers.

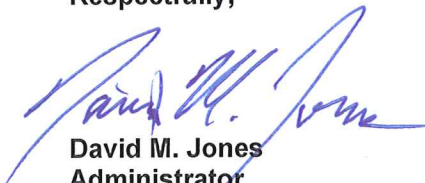
6. **Label Production** – The NDA committed to making the manganese warning label available upon request.
7. **Manganese Monitoring** – The Auto industry requested a monitoring provision be added to the regulation.

The NDA will act or not act regarding the salient items:

1. **Bills of Lading** – Legislative Counsel cited policy conflict adding bills of lading to regulation; cites duplicative language issue. NDA will not add to regulation.
2. **Enforcement** – NRS 590.070, NRS 590.100 and NAC 590.070 apply; no fuel testing procedure has been developed. NDA will not add testing to the regulation.
3. **Six Month Labeling Requirement** – Legislative Counsel and the Deputy Attorneys General Counsel clarified that “and” is a conjunction in SB 433, section 3, parts (a) and (b). Section 5 of the proposed regulation does not conflict with SB 433, section 3. NDA will not modify regulation.
4. **“Warning” versus “Attention” label wording** – SB 433 indicates warning label. Does not indicate attention label. NDA will retain “Warning” language on the proposed label.
5. **New Regulation Communications** – At the time this document was being crafted, NDA was working on a means to communicate. NDA is challenged due to the very constraint processing time period: the expected adoption date December 5, then the Legislative Commission codification date (expected at the end of December) and then implementation date of January 1, 2014, influence the notification method and alert time. NDA will not add communication language to the regulation.
6. **Label Production** – NDA, Division of Consumer Equitability will make warning labels available; NDA, DCE will incur the cost. NDA will order the labels.
7. **Manganese Monitoring** – NDA will not monitor manganese usage.

The NDA recommends the Board of Agriculture adopt the revised LCB File #R189-12 as is.

Respectfully,



David M. Jones
Administrator
Division of Consumer Equitability

Tab A	Senate Bill 433
Tab B	Revised LCB File #R189-12
Tab C	Workshop Meeting
Tab D	Hearing

TAB A

Senate Bill No. 433-Committee on Natural Resources

CHAPTER.....

AN ACT relating to motor vehicle fuel; requiring the State Board of Agriculture to adopt regulations that require a warning label to be affixed to any pump which dispenses any motor vehicle fuel to which any manganese or manganese compound has been added; requiring a person who sells motor vehicle fuel that contains manganese or any manganese compound to provide certain documentation to the purchaser of that fuel; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Board of Agriculture to adopt by regulation specifications for motor vehicle fuel in this State based upon certain criteria. (NRS 590.070) Section 3 of this bill requires the Board to adopt regulations requiring a warning label to be affixed to any pump from which is drawn any motor vehicle fuel that is sold to a consumer if the motor vehicle fuel contains manganese or any manganese compound, including, without limitation, methylcyclopentadienyl manganese tricarbonyl, and was delivered to the vendor within the immediately preceding 6 months.

Section 4 of this bill requires a person, other than a retailer of motor vehicle fuel, who sells a motor vehicle fuel that contains manganese or any manganese compound to provide documentation to the purchaser stating that the motor vehicle fuel contains manganese or any manganese compound and stating the volume of the compound expressed in milligrams per liter.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. (Deleted by amendment.)

Sec. 2. Chapter 590 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.

Sec. 3. *The State Board of Agriculture shall adopt regulations:*

1. Requiring a warning label to be affixed on each pump from which is drawn any motor vehicle fuel sold to a consumer if the motor vehicle fuel:

(a) Contains manganese or any manganese compound, including, without limitation, methylcyclopentadienyl manganese tricarbonyl; and

(b) Was delivered to the vendor within the immediately preceding 6 months.

2. Specifying the format, size, wording and placement of the warning label that a vendor is required to place on a pump



pursuant to this section. The regulations must ensure that the warning labels measure at least 4 inches by 4 inches and include, without limitation:

(a) A notice advising the consumer to read the label before dispensing the motor vehicle fuel;

(b) A warning that the motor vehicle fuel contains manganese or a manganese compound, including, without limitation, methylcyclopentadienyl manganese tricarbonyl; and

(c) A recommendation to consult the owner's manual for the consumer's motor vehicle before using the motor vehicle fuel.

Sec. 4. Any person, other than a retailer of motor vehicle fuel, who sells, offers for sale, assists in the sale of, delivers or transports motor vehicle fuel that contains manganese or any manganese compound must provide the purchaser, including without limitation, a retailer of motor vehicle fuel, with documentation expressly stating that the fuel contains manganese or a manganese compound and stating the volume of the compound expressed in milligrams per liter.

Sec. 5. NRS 590.020 is hereby amended to read as follows:

590.020 As used in NRS 590.010 to 590.330, inclusive, and sections 3 and 4 of this act, unless the context otherwise requires:

1. "Additives" means a substance to be added to a motor oil or lubricating oil to impart or improve desirable properties or to suppress undesirable properties.

2. "Advertising medium" means any sign, printed or written matter, or device for oral or visual communication.

3. "Alternative fuel" includes, without limitation, premium diesel fuel, B-5 diesel fuel, B-10 diesel fuel, B-20 diesel fuel, B-100 diesel fuel, M-85, M-100, E-85, E-100, liquefied petroleum gas, natural gas, reformulated gasoline, gasohol and oxygenated fuel.

4. "Brand name" means a name or logo that is used to identify a business or company.

5. "Grade" means:

(a) "Regular," "midgrade," "plus," "super," "premium" or words of similar meaning when describing a grade designation for gasoline.

(b) "Diesel" or words of similar meaning, including, without limitation, any specific type of diesel, when describing a grade designation for diesel motor fuel.

(c) "M-85," "M-100," "E-85," "E-100" or words of similar meaning when describing a grade designation for alternative fuel.



(d) "Propane," "liquefied petroleum gas," "compressed natural gas," "liquefied natural gas" or words of similar meaning when describing pressurized gases.

6. "Motor vehicle fuel" means a petroleum product or alternative fuel used for internal combustion engines in motor vehicles.

7. "Performance rating" means the system adopted by the American Petroleum Institute for the classification of uses for which an oil is designed.

8. "Petroleum products" means gasoline, diesel fuel, burner fuel kerosene, lubricating oil, motor oil or any product represented as motor oil or lubricating oil. The term does not include liquefied petroleum gas, natural gas or motor oil additives.

9. "Recycled oil" means a petroleum product which is prepared from used motor oil or used lubricating oil. The term includes rerefined oil.

10. "Rerefined oil" means used oil which is refined after its previous use to remove from the oil any contaminants acquired during the previous use.

11. "Used oil" means any oil which has been refined from crude or synthetic oil and, as a result of use, has become unsuitable for its original purpose because of a loss of its original properties or the presence of impurities, but which may be suitable for another use or economically recycled.

12. "Viscosity grade classification" means the measure of an oil's resistance to flow at a given temperature according to the grade classification system of the Society of Automotive Engineers or other grade classification.

Sec. 6. The State Board of Agriculture shall adopt the regulations required by section 3 of this act on or before January 1, 2014.

Sec. 7. This act becomes effective upon passage and approval for the purpose of adopting regulations and on January 1, 2014, for all other purposes.



TAB B

REVISED PROPOSED REGULATION OF
THE STATE BOARD OF AGRICULTURE

LCB File No. R189-12

October 16, 2013

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1 and 2, NRS 590.070 and 590.131.

A REGULATION relating to motor vehicle fuel; revising the requirements for posting the octane rating number of motor vehicle fuel; requiring a person who sells at retail motor vehicle fuel which contains manganese or a compound containing manganese to post on the pump or other device for dispensing the fuel a label indicating that the fuel contains manganese; specifying the form and contents of the label; setting forth when such a label must be affixed; and providing other matters properly relating thereto.

Section 1. NAC 590.063 is hereby amended to read as follows:

590.063 1. The octane rating number of the ~~[gasoline]~~ *motor vehicle fuel* from the proof of transfer must be posted on the pump or other device for dispensing the ~~[gasoline]~~ *motor vehicle fuel*.

2. The octane rating number of the product that is in the pump or other device for dispensing ~~[gasoline]~~ *motor vehicle fuel* must not be lower than the octane rating that is posted on the pump or device.

3. *In addition to the requirements set forth in subsections 1 and 2, any person who sells motor vehicle fuel at retail shall, if the motor vehicle fuel contains manganese or any*

compound containing manganese, including, without limitation, MMT, post on the pump or other device for dispensing the motor vehicle fuel a label which:

- (a) Meets the requirements of subsections 4 and 6;*
- (b) Is affixed during any period required by subsection 5; and*
- (c) Includes the following language:*

WARNING: Read label before dispensing fuel.

Motor vehicle fuel contains manganese, manganese compound or MMT.

Recommend vehicle operator consult owner's manual before using this motor fuel.

4. The label required pursuant to subsection 3 must:

- (a) Be legible and conspicuous;*
- (b) Be at least as large as 4 inches wide by 4 inches long;*
- (c) Consist of black ink on a background that is white; and*
- (d) Be written in at least 12-point font.*

5. The label required pursuant to subsection 3 must be affixed to the applicable pump or other device for dispensing motor vehicle fuel in the manner described in subsection 6:

- (a) At the time motor vehicle fuel containing manganese or any compound containing manganese, including, without limitation, MMT, is loaded into or otherwise placed in a storage tank from which the pump or other device for dispensing motor vehicle fuel draws its supply of fuel, and before the pump or other device for dispensing motor vehicle fuel may be used to dispense such fuel;*

(b) *For 6 months immediately after the time specified in paragraph (a); and*

(c) *For an additional 6 months immediately after any subsequent instance in which motor vehicle fuel containing manganese or any compound containing manganese, including, without limitation, MMT, is loaded into or otherwise placed in a storage tank from which the pump or other device for dispensing motor vehicle fuel draws its supply of fuel.*

6. *The label required pursuant to subsection 3 must, during any period specified in subsection 5, be affixed:*

(a) *To the exterior of each side of the pump or other device for dispensing motor vehicle fuel from which a consumer may dispense the fuel; and*

(b) *In a manner that is conspicuous and readily observable by the consumer.*

7. *The labels described in subsections 3 to 6, inclusive, may be obtained free of charge from the Division of Consumer Equitability of the State Department of Agriculture, 2150 Frazer Avenue, Sparks, Nevada 89431.*

8. *As used in this section, "MMT" means methylcyclopentadienyl manganese tricarbonyl.*

Sec. 2. This regulation becomes effective on January 1, 2014.

Digest for Revised Proposed Regulation R_189-12

Under existing law, the State Board of Agriculture is required to adopt specifications for motor vehicle fuel and enforce the specifications for motor vehicle fuel so adopted. (NRS 590.070) Existing law also directs the Board to adopt regulations to warn consumers concerning motor vehicle fuel that contains manganese or a manganese compound, including, without limitation, methylcyclopentadienyl manganese tricarbonyl, which is commonly referred to as MMT. (NRS 590.131)

This regulation: (1) revises the requirements for posting the octane rating number of motor vehicle fuel; (2) requires a person who sells at retail motor vehicle fuel which contains manganese or a compound containing manganese to post on the pump or other device for dispensing the fuel a label indicating that the fuel contains manganese; (3) prescribes the required form and content of the label indicating that the fuel contains manganese; and (4) sets forth when such a label must be affixed to the pump or other device.

TAB C

DIVISION OF CONSUMER EQUITABILITY WORKSHOP MEETING

October 2, 2013

Purpose of Meeting: To conduct a public and business workshop regarding Senate Bill 433 (SB 433) and the Legislative requirement for the Board of Agriculture to adopt regulations pertaining to the manganese fuel additive. This Senate Bill impacts NAC 590. SB 433 is attached for reference.

In Attendance:

Bill Striejewski --- Nevada Bureau of Petroleum Technology
Brandon Harmon --- Nevada Division of Consumer Equitability
Cathy Erskine --- Auto Alliance, Auto Industry
Dave Jones --- Nevada Division of Consumer Equitability
Lawrence Wah --- Nevada Petroleum Marketers Association (CSA), Petroleum Industry
Lea Tauchen --- Nevada Retail Association, Retail Industry
Michael Hillerby --- Honda, Auto Industry
Nancy Long --- FCJV for Western States Petroleum Association, Petroleum Industry
Nick Economides --- Chevron Corp., Petroleum Industry
Paul Anderson --- Thomas Petroleum, Petroleum Industry and Board of Agriculture
Sean Higgins --- AFTON Chemicals, Chemical Industry

In General:

The Administrator of the Nevada Division of Consumer Equitability conducted a workshop 9:00 – 11:30, October 2, 2013, to solicit comments, positions, feedback and impacts from the attendees and the public regarding the SB 433 regulation requirement and manganese labeling. Comments and correspondence are attached for reference.

The Administrator commenced the meeting and identified the differences between the previously worked on LCB File # R189-12 (see Attachment 2) and SB 433. Label language was significantly changed, label sized was increased and a transfer/delivery documentation requirement indicating that manganese was present was added. Additionally, manganese labels would be provided by the Division of Consumer Equitability.

The sequence of events were:

Past:

November 13, 2012

Nevada Department of Agriculture conducted a manganese workshop.

January 17, 2013	Nevada Department of Agriculture conducted a second manganese workshop.
May/June, 2013	Nevada Legislature passed SB 433; this action changed and trumped previous work at other workshops.
October 2, 2013	Nevada Department of Agriculture conducts SB 433 manganese workshop.
Future:	
November 4, 2013	Nevada Department of Agriculture will conduct a SB 433 manganese hearing.
December 5, 2013	SB 433 supplemental regulation (revised LCB File #R189-12) presented to the Board of Agriculture for adoption.

Each of the Attendees were asked to provide answers/input regarding specific questions (see attached) then enter into a general discussion. Comments from that discussion are indicated below:

Mike Hillerby provided a sample label (see Attachment 4) and recommended the State use it. Mike also stated he does not support the word "**may** contain manganese" on the label.

Sean Higgins provided a sample label (see Attachment 5) and recommended the State use it. Sean recommended a green colored label but is OK with black print on white background.

Mike Hillerby specified he approves the word "Warning" on label and does not agree with the font size of Sean's label language; Sean Higgins does not advocate the word "Warning" on label. Mike stated that at a minimum the word "Attention or Warning" must be placed on the label.

Nick Economides supports Mike Hillerby's label and approves of either the word "Warning" or "Attention" at the top of the label. Nick does not support "**may** contain manganese"; he does not support the label language that "Some automakers recommend against using fuel containing manganese". Nick supports the first part of Sean's label; should have language with consulting owners manual.

Lawrence Wah does not support green coloring of Sean's label; both Lawrence and Nick support black print on a white label. Lawrence is concerned about how to

notify other states of the SB 433 law and the subsequent and supporting regulation. Lawrence would like the label to be placed on the pump by the octane level. Mike H. OK with that.

Regarding manganese motor fuel transfer/delivery documentation, Nick E., Sean H. and Lawrence W. advocate the SB 433 manganese containment language. Additionally, Nick, Sean and Lawrence advocate manganese containment language be specified on bills of lading. Lawrence would also emphasize the volume be included.

Paul Anderson expressed two concerns: 1. How would the public and business participants be able to comment on the revised LCB File #R189-12 before the adoption meeting; and, 2. How would the small gas station owners obtain the labels? Dave Jones stated that he would provide revised LCB File #R189-12 copies one week prior to the November 4th Hearing. Dave Jones also stated that the Division of Consumer Equitability would make the manganese labels available. Paul also has an issue with the "may" labeling language.

Nick Economides recommended the Department of Agriculture allow businesses the option to print their own label.

Attachments:

Attachment 1 – SB433

Attachment 2 – LCB File No. R189-12 dated January 15, 2013 (original)

Attachment 3 – Manganese Feedback Forms

Attachment 4 – Mike Hillerby's Sample Label proposal

Attachment 5 – Sean Higgin's Sample Label proposal

**PROPOSED REGULATION OF
THE STATE BOARD OF AGRICULTURE**

LCB File No. R189-12

January 15, 2013

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: § 1, NRS 590.070.

A REGULATION relating to gasoline; requiring a person who sells at retail gasoline which contains manganese or any compound containing manganese to post on the pump or other device for dispensing the gasoline a label indicating that the gasoline contains or may contain manganese; and providing other matters properly relating thereto.

Section 1. NAC 590.063 is hereby amended to read as follows:

590.063 1. The octane rating number of the gasoline from the proof of transfer must be posted on the pump or other device for dispensing the gasoline.

2. The octane rating number of the product that is in the pump or other device for dispensing gasoline must not be lower than the octane rating that is posted on the pump or device.

3. *In addition to the requirements set forth in subsections 1 and 2, any person who sells gasoline at retail shall, if the gasoline contains manganese or any compound containing manganese, post on the pump or other device for dispensing the gasoline a label which includes the following language:*

This gasoline contains or may contain manganese.

4. *The label required pursuant to subsection 3 must:*

(a) Be legible and conspicuous;

(b) Be at least as large as 3 inches wide by 2 1/2 inches long; and

(c) Consist of black ink on a background that is yellow or white.

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600

LEGISLATIVE COMMISSION (775) 684-6800
MO DENIS, *Senator, Chairman*
Rick Combs, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
MAGGIE CARLTON, *Assemblywoman, Chair*
Cindy Jones, *Fiscal Analyst*
Mark Krmpotic, *Fiscal Analyst*



RICK COMBS, *Director*
(775) 684-6800

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815
DONALD O. WILLIAMS, *Research Director* (775) 684-6825

January 16, 2013

Dave Jones, Administrator
Division of Measurement Standards
2150 Frazer Ave.
Sparks, Nevada 89431

Re: LCB File No. R189-12

Dear Mr. Jones:

A proposed regulation of the State Board of Agriculture has been examined pursuant to NRS 233B.063 and is returned in revised form.

We invite you to discuss with us any questions which you may have concerning this review. Please make reference to our file number in all further correspondence relating to this regulation.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Scott McKenna", followed by a horizontal line.

M. Scott McKenna
Senior Principal Deputy Legislative Counsel

Brenda J. Erdoes
Legislative Counsel

MSM/slj
Enclosure

Notice of Workshop to Solicit Comments on Proposed Regulation

The Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601) is proposing the Amendment of regulations pertaining to **chapter 590** of the Nevada Administrative Code. A workshop has been set for 9:00 AM, October 2, 2013, at the Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks) large conference room.

Company/Organization Name: Honda - Mike Hillerby

Industry: Auto – Honda

Representative Name, Phone Number and email: Mike Hillerby

SB 433 Manganese Labeling:

Item Number 1 – Definitions	Feedback or Input
Revised Regulation Comment: (Warning label characteristics, Documentation trail, regulation language)	<ol style="list-style-type: none">1. Would like to reintroduce Mike Hillerby's label for final consideration (See Minutes attachment).2. Requested there be a manganese use monitoring report maintained.3. Added that NRS 590-100 4 provides the State enforcement powers regarding mislabeled fuel pumps.
Requestor desired impact pertaining to request: (Cost?)	Pertaining to a monitoring report, Mike indicated that if no report was maintained industries, consumers or the State of Nevada would not know who has used manganese products.

Notice of Workshop to Solicit Comments on Proposed Regulation

The Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601) is proposing the Amendment of regulations pertaining to **chapter 590** of the Nevada Administrative Code. A workshop has been set for 9:00 AM, October 2, 2013, at the Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks) large conference room.

Company/Organization Name: Nevada Petroleum Marketers Association

Industry: Petroleum

Representative Name, Phone Number and email: Lawrence Wah

SB 433 Manganese Labeling:

Item Number 1 – Definitions	Feedback or Input
Revised Regulation Comment: (Warning label characteristics, Documentation trail, regulation language)	<ol style="list-style-type: none">1. How would the State of Nevada notify surrounding States of Nevada's new requirements? How does Nevada make sure those states are compliant?2. What is the projected cost impacts of this regulation?3. Supports the 4" by 4" sized label.
Requestor desired impact pertaining to request: (Cost?)	

Notice of Workshop to Solicit Comments on Proposed Regulation

The Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601) is proposing the Amendment of regulations pertaining to **chapter 590** of the Nevada Administrative Code. A workshop has been set for 9:00 AM, October 2, 2013, at the Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks) large conference room.

Company/Organization Name: AFTON Chemicals

Industry: Chemical

Representative Name, Phone Number and email: Sean Higgins

SB 433 Manganese Labeling:

Item Number 1 – Definitions	Feedback or Input
Revised Regulation Comment: (Warning label characteristics, Documentation trail, regulation language)	<ol style="list-style-type: none">1. Label – supports adding “may” to the manganese content language.2. Transfer Documents – supports requiring the bill of lading as the transfer document. This is most important aspect.3. Label Emplacement – do not adhere label until fuel is placed in storage tank.4. Label Format – see attachments.
Requestor desired impact pertaining to request: (Cost?)	

Notice of Workshop to Solicit Comments on Proposed Regulation

The Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601) is proposing the Amendment of regulations pertaining to **chapter 590** of the Nevada Administrative Code. A workshop has been set for 9:00 AM, October 2, 2013, at the Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks) large conference room.

Company/Organization Name: Nevada Retailers Association

Industry: Retail

Representative Name, Phone Number and email: Lea Tauchen

SB 433 Manganese Labeling:

Item Number 1 – Definitions	Feedback or Input
Revised Regulation Comment: (Warning label characteristics, Documentation trail, regulation language)	1. Concerned about enforcement of this law and regulation.
Requestor desired impact pertaining to request: (Cost?)	Unsure as to the cost impact.

Notice of Workshop to Solicit Comments on Proposed Regulation

The Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601) is proposing the Amendment of regulations pertaining to **chapter 590** of the Nevada Administrative Code. A workshop has been set for 9:00 AM, October 2, 2013, at the Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks) large conference room.

Company/Organization Name: Thomas Petroleum and BOA

Industry: Petroleum

Representative Name, Phone Number and email: Paul Anderson

SB 433 Manganese Labeling:

Item Number 1 – Definitions	Feedback or Input
Revised Regulation Comment: (Warning label characteristics, Documentation trail, regulation language)	<ol style="list-style-type: none">1. Would like to know what is impact on other states.2. Was concerned as to who would be responsible to notify the industry and other states of the new requirement.
Requestor desired impact pertaining to request: (Cost?)	

Notice of Workshop to Solicit Comments on Proposed Regulation

The Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601) is proposing the Amendment of regulations pertaining to **chapter 590** of the Nevada Administrative Code. A workshop has been set for 9:00 AM, October 2, 2013, at the Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks) large conference room.

Company/Organization Name: State – Bureau of Petroleum Technology

Industry: Nevada

Representative Name, Phone Number and email: Bill Striejewski

SB 433 Manganese Labeling:

Item Number 1 – Definitions	Feedback or Input
Revised Regulation Comment: (Warning label characteristics, Documentation trail, regulation language)	1. Lettering – NRS does address for advertising but not warning issues.
Requestor desired impact pertaining to request: (Cost?)	

Notice of Workshop to Solicit Comments on Proposed Regulation

The Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601) is proposing the Amendment of regulations pertaining to **chapter 590** of the Nevada Administrative Code. A workshop has been set for 9:00 AM, October 2, 2013, at the Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks) large conference room.

Company/Organization Name: Chevron

Industry: Petroleum

Representative Name, Phone Number and email: Nick Economides

SB 433 Manganese Labeling:

Item Number 1 – Definitions	Feedback or Input
Revised Regulation Comment: (Warning label characteristics, Documentation trail, regulation language)	<ol style="list-style-type: none">1. Enforcement – request manganese language on documentation; recommends manganese specific language on a bill of lading or invoice.2. Station transfer – needs requirement language at the retail station level as to how much manganese fuel remains in storage tank at time of retail station transfer/purchase.
Requestor desired impact pertaining to request: (Cost?)	

ATTENTION

**READ
BEFORE
YOU
PUMP!**

Check Your Owner's Manual Before Fueling!

- Gasoline sold here may contain manganese or MMT
- Some automakers recommend against using fuel containing manganese or MMT
- Resulting damage may not be covered by warranty

Read Before Dispensing Fuel

The fuel dispensed from this pump
contains manganese, or a
manganese compound,
including
methylcyclopentadienyl
manganese tricarbonyl.

It is recommended that you
consult your owner's manual before
using this fuel.

TAB D

DIVISION OF CONSUMER EQUITABILITY HEARING
November 4, 2013

Purpose of Meeting: To conduct a public and business hearing regarding Senate Bill 433 (SB 433) and the Legislative requirement for the Board of Agriculture to adopt a regulation pertaining to the manganese fuel additive. This Senate Bill impacts NAC 590. SB 433 is attached for reference.

In Attendance:

Alfredo Alonso--- Auto Alliance, Auto Industry
Bill Striejewski --- Nevada Bureau of Petroleum Technology
Brandon Harmon --- Nevada Division of Consumer Equitability
Cathy Erskine --- Auto Alliance, Auto Industry
Dave Jones --- Nevada Division of Consumer Equitability
Dennis Belcourt – Nevada Attorneys General Office
Lea Tauchen --- Nevada Retail Association, Retail Industry
Michael Hillerby --- Honda, Auto Industry
Nancy Long --- FCJV for Western States Petroleum Association, Petroleum Industry
Nick Economides --- Chevron Corp., Petroleum Industry
Paul Anderson --- Thomas Petroleum, Petroleum Industry and Board of Agriculture
Sean Higgins --- AFTON Chemicals, Chemical Industry

In General:

The Administrator of the Nevada Division of Consumer Equitability conducted a hearing 9:00 – 11:00, November 4, 2013, to present the revised LCB File # R189-12 to the public and solicit comments, positions, feedback and impacts from the attendees and the public. This subject regards the SB 433 regulation requirement and manganese labeling. Comments and correspondence are attached for reference.

The Administrator commenced the meeting and presented the revised LCB File # R189-12 for comment.

The sequence of events were/are:

Past:

November 13, 2012	Nevada Department of Agriculture conducted a manganese workshop.
January 17, 2013	Nevada Department of Agriculture conducted a second manganese workshop.

May/June, 2013	Nevada Legislature passed SB 433; this action changed and trumped previous work at other workshops.
October 2, 2013	Nevada Department of Agriculture conducted SB 433 manganese workshop.
October 28, 2013	NDA made available the revised LCB File #R189-12
November 4, 2013	Nevada Department of Agriculture conducted a SB 433 manganese hearing.
Future:	
December 5, 2013	SB 433 supplemental regulation (revised LCB File #R189-12) presented to the Board of Agriculture for adoption.

Each of the Attendees were asked to provide answers/input regarding specific questions (see attached) then enter into a general discussion. Comments from that discussion are indicated below:

Nick Economides asked when he should provide written comments. Dave Jones recommended no later than Thanksgiving. Nick additionally asked for a copy of the explanation as to why bill of lading was not required as transfer document. Dave Jones would provide.

In general, several in attendance inquired as to if NDA would send out some type of communications regarding the new manganese law and regulation.

Paul Anderson and Sean Higgins expressed dissatisfaction with section 5 of the revised LCB File #189-12, specifically, the point of maintaining the label on the pump for additional six months following each subsequent manganese motor fuel download into the fuel storage tank.

Paul A., Sean H. and Nick E. all expressed concerns over the SB 433 six month labeling posting requirement should the fuel tank be purged of manganese motor fuel. The questions asked were: 1. Can the station owner remove the manganese label after three months if the tank is free of manganese motor fuel? 2. Who is responsible to test the storage tank to ensure the tank has no motor fuel containing manganese?

Dennis Belcourt indicated there may be an issue in interpreting the SB 433 six month rule pertaining to the "and" in section 3.

Attachments:

Attachment 1 – SB433

Attachment 2 – **Revised** LCB File No. R189-12 dated October 16, 2013

Attachment 3 – Manganese Feedback Forms

Attachment 4 – Mike Hillerby's Sample Label proposal

Attachment 5 – Sean Higgin's Sample Label proposal

Attachment 6 – Nick Economides Input Letter (To be added.)

Attachment 7 – Sean Higgins Input Letter

Attachment 8 – State of Nevada Manganese Label

Notice of Hearing to Solicit Comments on Proposed Regulation

The Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601) is proposing the Amendment of regulations pertaining to **chapter 590** of the Nevada Administrative Code. A hearing has been set for 9:00 AM, November 4, 2013, at the Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks) large conference room.

Company/Organization Name: Alliance of Auto Manufacturers

Industry: Auto

Representative Name, Phone Number and email: Alfredo Alonso

SB 433 Manganese Labeling:

Item Number 1 – Definitions	Feedback or Input
Revised Regulation Comment: (Revised warning label characteristics, Documentation trail, regulation language)	<ol style="list-style-type: none">1. Supports revised LCB File #R189-12 as is.2. Is aligned with Mike Hillerby's comments.3. Notification/Awareness of law regulation change the businesses responsibility.4. Supports the SB 433 six month labeling requirement.
Requestor objection or acceptance of revised regulation: (Cost?)	

Notice of Hearing to Solicit Comments on Proposed Regulation

The Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601) is proposing the Amendment of regulations pertaining to **chapter 590** of the Nevada Administrative Code. A hearing has been set for 9:00 AM, November 4, 2013, at the Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks) large conference room.

Company/Organization Name: AFTON Chemicals

Industry: Chemical

Representative Name, Phone Number and email: Sean Higgins

SB 433 Manganese Labeling:

Item Number 1 – Definitions	Feedback or Input
Revised Regulation Comment: (Revised warning label characteristics, Documentation trail, regulation language)	<ol style="list-style-type: none">1. Favors the label title of “Attention” not “Warning”.2. States section 5 of the revised regulation conflicts with section 3 of SB 433. There is no provision.3. Regulation needs a requirement on a method of how the supplier will communicate to/notify retailers of motor fuel containing manganese
Requestor objection or acceptance of revised regulation: Cost?	Objects – revised LCB File #189-12.

Notice of Hearing to Solicit Comments on Proposed Regulation

The Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601) is proposing the Amendment of regulations pertaining to **chapter 590** of the Nevada Administrative Code. A hearing has been set for 9:00 AM, November 4, 2013, at the Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks) large conference room.

Company/Organization Name: Chevron

Industry: Petroleum

Representative Name, Phone Number and email: Nick Economides

SB 433 Manganese Labeling:

Item Number 1 – Definitions	Feedback or Input
Revised Regulation Comment: (Revised warning label characteristics, Documentation trail, regulation language)	<ol style="list-style-type: none">1. Regulation unreasonable in that it does not communicate manganese added to motor fuel on a bill of lading; bill of lading should be the enforcement vehicle.2. There is no provision specifying how the retail station gets approval to remove the label. This pertains both to before and after the six month time constraint. Also, is concerned about:<ul style="list-style-type: none">• How to test fuel once storage tank pumped out.• Who, which laboratory facility will test fuel in storage tank.• Label remains on pump for an additional 6 months from new delivery date.
Requestor objection or acceptance of revised regulation: Cost?	Objects – revised LCB File #189-12 is deficient.

Notice of Hearing to Solicit Comments on Proposed Regulation

The Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601) is proposing the Amendment of regulations pertaining to **chapter 590** of the Nevada Administrative Code. A hearing has been set for 9:00 AM, November 4, 2013, at the Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks) large conference room.

Company/Organization Name: Thomas Petroleum, Board of Agriculture

Industry: Petroleum and State

Representative Name, Phone Number and email: Paul Anderson

SB 433 Manganese Labeling:

Item Number 1 – Definitions	Feedback or Input
Revised Regulation Comment: (Revised warning label characteristics, Documentation trail, regulation language)	<ol style="list-style-type: none">1. Concerned about notifying other states of law and regulations, specifically, refiners, distributors, resellers and retailers.2. Recommends NDA send out memo with new SB 433 requirements.
Requestor objection or acceptance of revised regulation: (Cost?)	Objects to the six month requirement; takes away latitude to remove label should retail storage be free of manganese inside of the six month requirement.

Notice of Hearing to Solicit Comments on Proposed Regulation

The Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601) is proposing the Amendment of regulations pertaining to **chapter 590** of the Nevada Administrative Code. A hearing has been set for 9:00 AM, November 4, 2013, at the Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks) large conference room.

Company/Organization Name: Nevada Retailers Association

Industry: Retail

Representative Name, Phone Number and email: Lea Tauchen

SB 433 Manganese Labeling:

Item Number 1 – Definitions	Feedback or Input
Revised Regulation Comment: (Revised warning label characteristics, Documentation trail, regulation language)	1. Supports revised LCB File #R189-12 providing suppliers provide accurate information on delivery documentation.
Requestor objection or acceptance of revised regulation: (Cost?)	

Notice of Hearing to Solicit Comments on Proposed Regulation

The Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks, NV 89431; Phone: (775) 353-3601) is proposing the Amendment of regulations pertaining to **chapter 590** of the Nevada Administrative Code. A hearing has been set for 9:00 AM, November 4, 2013, at the Nevada Department of Agriculture (Address: 405 South 21st Street, Sparks) large conference room.

Company/Organization Name: Honda - Mike Hillerby

Industry: Auto – Honda

Representative Name, Phone Number and email: Mike Hillerby

SB 433 Manganese Labeling:

Item Number 1 – Definitions	Feedback or Input
Revised Regulation Comment: (Revised warning label characteristics, Documentation trail, regulation language)	<ol style="list-style-type: none">1. Supports revised LCB File #R189-12 as is.2. Issue with regulation may be how to prove if manganese present.
Requestor objection or acceptance of revised regulation: (Cost?)	NRS 590.100 is enforcement provision. NAC 590.070 list penalties.

David Michael Jones

From: Sean Higgins [shiggins@portergs.com]
Sent: Friday, November 08, 2013 11:18 AM
To: David Michael Jones
Cc: 'barbara.little@newmarket.com'
Subject: SB433-MMT
Attachments: Afton Draft Reg Ltr 11 07 13-klfrev.pdf

Dave:

Please find attached a letter regarding the proposed regulations regarding MMT labeling. Please make this letter part of the record of the November 4 meeting. Also, please make this letter available to the Board members in advance of their December meeting.

Thank you for your consideration.

Sean

Sean T. Higgins
Executive Director of Government Affairs & Public Policy

PORTER GORDON SILVER
COMMUNICATIONS

shiggins@portergs.com

3960 Howard Hughes Pkwy.
Ninth Floor
Las Vegas, Nevada 89169
T: 702.796.5555
F: 702.369.2666
C: 702.327.0255

11/15/2013

PORTER GORDON SILVER
COMMUNICATIONS

November 8, 2013

Via e-mail: djones@agri.nv.gov

Dave Jones
Administrator
Division of Consumer Equitability
Nevada Department of Agriculture
2150 Frazer Avenue
Sparks, Nevada 89431

RE: LCB File # R 189-12; Manganese labeling

Dear Mr. Jones:

Please allow this letter to supplement my oral testimony given relative to the above-mentioned file at the hearing held on November 4, 2013 on behalf of my client, Afton Chemical Corporation. I am in receipt of your e-mail today stating that no changes will be made to the proposed regulation. I would respectfully argue that the proposed regulation, as written, does not comply with the requirements set forth in SB433 and may impose a stricter burden upon the retailer than was included in the bill.

NRS 590, as amended by SB433 requires the following before labeling must occur:

1. Requiring a warning label to be affixed on each pump from which is drawn any motor vehicle fuel sold to a consumer if the motor vehicle fuel:
 - (a) Contains manganese or any manganese compound, including, without limitation, methylcyclopentadienyl manganese tricarbonyl; and
 - (b) Was delivered to the vendor within the immediately preceding 6 months. (emphasis added)

The fuel in the tanks must contain mmt® and it must have been delivered within six months. If either of these is not present, there is no requirement to label. The regulation, as written, does not follow SB433.

The proposed regulation states:

November 7, 2013

Page 2

"5. The label ... must be affixed...", "(a) At the time motor vehicle fuel containing manganese ..., is loaded...", "(b) for 6 months immediately after the time specified in paragraph (a); and (c) for an additional 6 months immediately after any subsequent instance in which motor vehicle fuel containing manganese ... is loaded."

As written, there is a requirement for the label to remain in place for 6 months after any fuel with manganese is loaded. SB433 *only* required the label if there was fuel containing manganese in the pump. This would allow for removal of the label prior to the six month period if the retailer could show the absence of manganese in the fuel in the tank. The proposed regulation provides no such relief. I would recommend adding language similar to the following to section 5 of the proposed regulation;

“; unless the retailer can prove, to the satisfaction of the Department, that the motor vehicle fuel being dispensed from the pump does not contain manganese or any compound containing manganese, including, without limitation, MMT.”

Additionally, I would also request that the word “Warning”, which is proposed to be placed on the label be replaced by the word “Attention”. While SB433 does call it a warning label, the legislature did not find that manganese or mmt posed any risk to engines, they only required labeling. The bill goes on to state that the label should have, *“(a) A notice advising the consumer to read the label before dispensing the motor vehicle fuel;”* Based on this, even though the bill used the term “warning label”, it is really a notification label. We believe the term “Attention” more accurately conveys the meaning intended by SB433.

Please make this letter part of the record for the hearing held on November 4, 2013 and include in any materials supplied to the Board members.

Please feel free to contact me if you have any questions.

Sincerely,



Sean T. Higgins
Executive Director
Government Affairs & Public Policy



WARNING

Read label before dispensing fuel.

**Motor vehicle fuel contains manganese,
manganese compound or MMT.**

Recommend vehicle operator
consult owner's manual
before using this motor fuel.

agri.nv.gov



7

Food and Nutrition

7A

Update to Board

(Attachment)

FOOD AND NUTRITION UPDATE
Presented to: Nevada Board of Agriculture
December 5, 2013

Development

- Analyzed the cost of installing dairy lab at Department of Agriculture
- Participated in FDA Rating Inspection to continue interstate milk shipments
- School Breakfast Grants- Received School Breakfast Expansion Grant 2-year grant totaling \$ 160,000; developing RFA
- Collaborated with Plant Industry to develop “Farmer Trading Cards” which have been distributed to farmers during rollout event at the Great Basin Community Food Coop
- National School Lunch Week October 14– 18, 2013, Provided informational video and media which included newsprint articles and local television coverage
- Met with representatives of the Food Bank of Northern Nevada to discuss collaborative efforts
- Developing a Nevada Farm to School Network needs assessments which will assist with the development of a Strategic Plan
- Developed a strategy for implementing the Administrative Review process and approximately 11 sponsors will be reviewed this year
- The Food and Nutrition Division is assembling a TEFAP Advisory Board to develop the State Plan

Services

- Completed Brucellosis testing on goat herd in Fallon; negative results
- Completed 41 dairy farm inspections
- Provided tour of new dry powder milk plant in Fallon for Dairy Commissioners and Legislative Counsel Bureau staff
- Conducted investigation and terminated raw milk sales in Las Vegas
- Conducted investigations of below cost sales as complaints were received, several non-compliance issues were found and have been resolved
- Approved cheese processing facility in Yerington and gelato manufacturer in Las Vegas
- Utilizing University of Nevada, Reno and Truckee Meadows Community College interns on various projects
- Conducted Urban Farm and School Gardens tour as part of recognizing October as Farm-to-School month
- Providing on-going technical assistance for all child nutrition programs
- Developed crediting spreadsheet and recipes to increase utilization of USDA Foods
- Made specification sheets available online and in CNP2000 for sponsors to access current information for processed foods
- Developed an on-line wellness policy implementation evaluation tool

Training and Presentations

- Developed e-learning course for milk drivers test
- Coordinated, presented, and participated in the Nevada Food Safety Task Force Seminar
- Provided training for NSLP sponsors at Nevada School Nutrition Association Annual Conference
- Variety of informational webinars provide to sponsors
- Participated in Nevada Regional Food Summit, November 20, 2013, Governor's Mansion
- Developed e-learning wellness modules for the general public as well as licensed teachers to assist with implementation of local wellness policy
- Developed a CACFP e-learning module for returning sponsors
- Presented at "Beyond the Hub" meeting hosted by Nevada Rural Development addressing rural food deserts and collaboration efforts
- Presented at the USDA Western Region Nutrition Summit on the topic of Nevada's collaboration efforts and the Food and Nutrition Division

Participation

- Thirty-three sponsors were approved to participate in the National School Lunch Program (NSLP), School Breakfast Program (SBP) and Afterschool Snack Programs
- Sixty sponsors were approved for the Child and Adult Care Food Program (CACFP)
- Completed the Summer Food Service Program for 2013
- Senior Farmers Market Nutrition Program, SFMNP, wrapped up the 2013 program year. Over 5,000 Nevada Seniors were served this year and the end of the program had a successful bulk purchase from Nevada farmers to use up remaining grant funds and serve more seniors
- For Federal Fiscal Year 2014, The Emergency Food Assistance Program, TEFAP, has agreements with 76 agencies and is serving over 70,000 people per month
- The Commodity Supplemental Food Program, CSFP, served 7,300 seniors per month for the 2013 Federal Fiscal Year. There were more seniors on waiting lists as we are limited by the caseload assignment from USDA. We have requested 2500 additional caseload with the grant request for the 2014 program
- The Food Distribution Program on Indian Reservations, FDPIR, caseload is growing due to the cuts to the SNAP benefits

Recognition

- Anna Vickery was elected as Chair of the Pacific Southwest Regional Equipment Review
- Submitted an application to USDA to recognize an SFSP sponsor as an exemplary model of increasing participation to receive the Sunshine Award

8

Animal Industries

8A

Update to Board

8B

Brand District Lines

(Attachment)

*Possible Action



NEVADA DEPARTMENT OF AGRICULTURE
DIVISION OF LIVESTOCK IDENTIFICATION
4780 E. IDAHO STREET, ELKO, NEVADA 89801
Phone: 775-738-8076 / Fax: 775-738-2639

FORM # 104-2	
Return	Print

BRAND INSPECTION CLEARANCE CERTIFICATE

FROM: LEGAL OWNER OF LIVESTOCK Flint Wright OWNER'S EMAIL ADDRESS PLACE OF INSPECTION wells, NV COUNTY Elko ADDRESS P O Box 670 Ash Fork, AZ 86320	TO: BUYER OR COSIGNEE Dick & Billie Brazeal BUYER'S EMAIL ADDRESS DESTINATION ADDRESS P O Box 98 Carlin, NV 89822
--	---

☒ Change of Ownership
☐ Horse Annual
☐ Horse Lifetime
☐ Consigned to Sale
☒ In State
☐ Pasture to Pasture
☐ Slaughter
☐ Waive 1st Animal
☐ Feedlot Inspection
 Fee

HEALTH CERTIFICATE #
12345
 ENTRY OR COMMUTER PERMIT #
NV 3568

FOR TRANSPORT THIS CERTIFICATE EXPIRES (DATE AND TIME)
2013-11-21 23:00

TOT 0	COWS:0 STEERS:300 HEIFERS:0 BULLS:0 HORSES:0	(click)yrs	BRAND / LOCAT: RR 	ALT BRAND / LOCAT:

Total Head 300	Brand Inspection Fee:	309.00	-- Bill	-- Cash	<input checked="" type="checkbox"/> Check # 6546
	NV Beef Council:	300.00	-- Cash	-- Check #	
	Hours (if applicable):	0.00	-- Beef Checkoff Fee Non-compliance		
	Mileage (if applicable):	0.00			
	TOTAL AMOUNT DUE:	609.00			

Ten Animals or Less: -- Brought to inspector -- Premise ID No. -- Extra ordinary permit

SIGNATURE OF OWNER OR AUTHORIZED AGENT

SIGNATURE OF BUYER OR AGENT

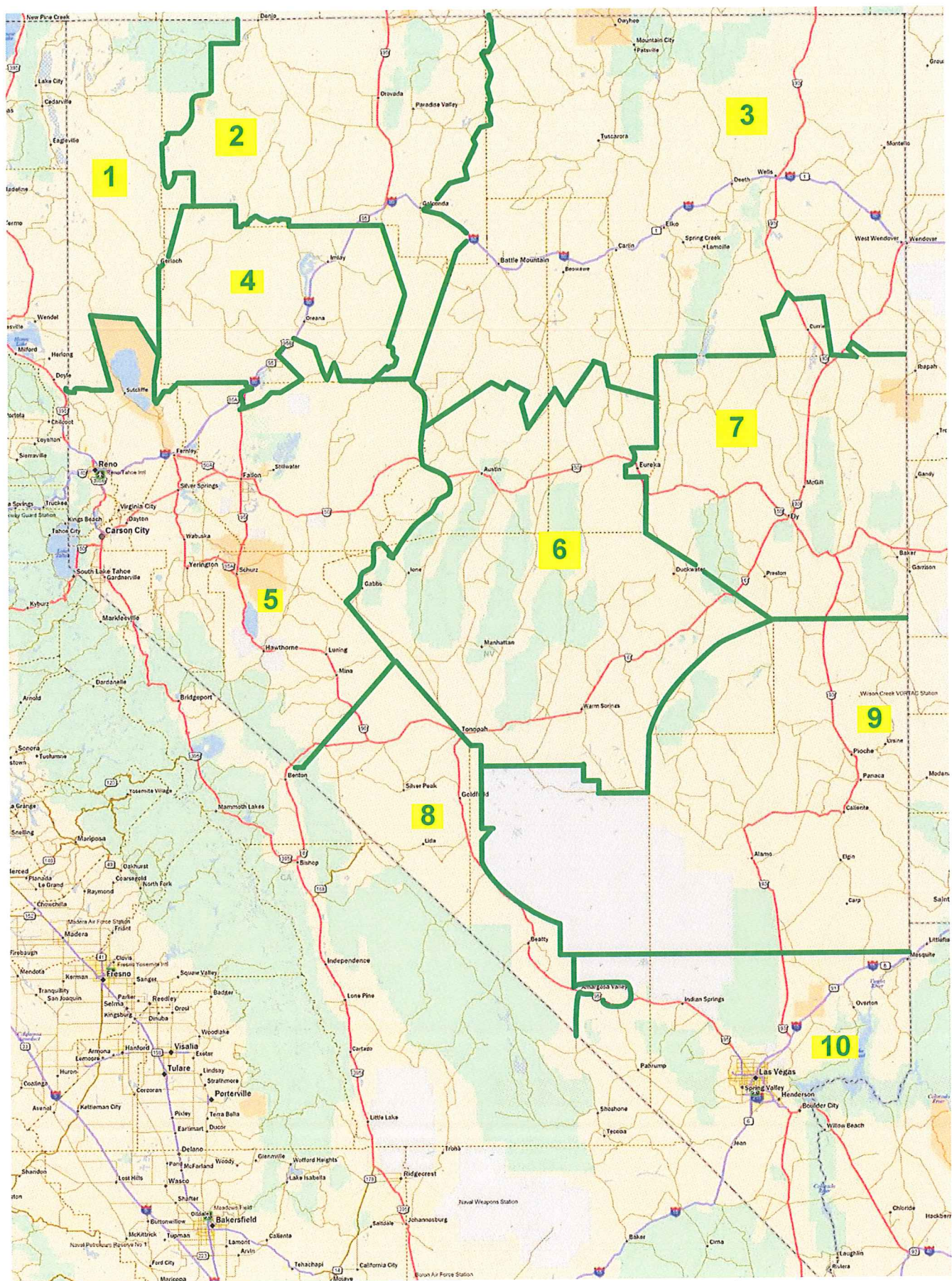
NAME OF TRANSPORTER	TRANSPORTER LICENSE #	DEALER'S AND/OR AGENT'S LICENSE # (REQUIRED BY NRS 576.020)
Wagner	NV 356	0678-RD

Falsification or altering of this certificate is unlawful and subject to penalties per NRS 205, 206, and 207.
X I hereby certify that I have personally inspected the above livestock and have accurately recorded the brands and marks thereon to the best of my ability.

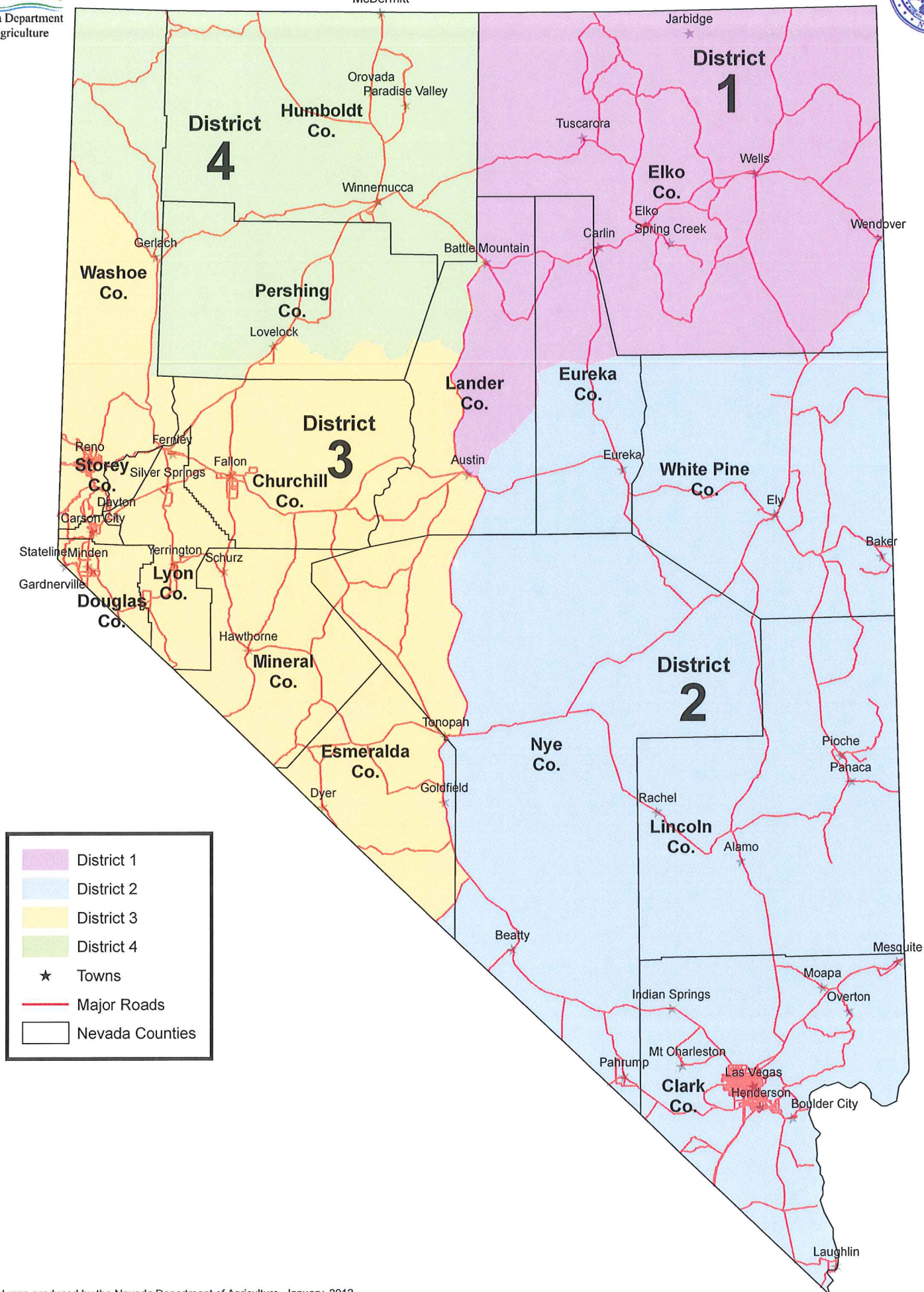
HOURS
MILEAGE

SIGNATURE BRAND INSPECTOR

DATE OF INSPECTION
2013-11-20
INSPECTOR No.
52246
DISTRICT
Elko



Brand Inspection Districts



8C

Resource Management Plan

*Possible Action

8D

Winnemucca BLM
Office EOU Grazing
Agreements as it
pertains to
private lands

*Possible Action

TAB

A

Aug. 12, 2013

DeLong

Letter to

BLM

August 26, 2013

STATE OF NEVADA
DEPT OF AGRICULTURE
2013 AUG 29 PM 12:50

Bureau of Land Management
Winnemucca Field Office
Attn: Garrett Noles, Derek Mesmer, and Mandy DeForest
5100 E. Winnemucca Blvd.
Winnemucca, NV 89446

RE: Humboldt House, Humboldt Valley, Majuba

Dear Garrett, Derek, & Mandy:

This letter is being written to address some of our concerns with the allotments that we currently own and have grazing permits for. We are a family owned and operated ranch in both Pershing and Humboldt counties. Most of our allotments are comprised of checkerboard lands which were granted to the Pacific Railroad in July 2, 1864. It is roughly a 33% BLM 67% private lands split. Our predecessors were grazing these lands before that period of time as we still do. For the past 150 years both sheep and cattle have been utilizing the forage on both the BLM managed lands as well as the checkerboard railroad lands. In just the last decade we have seen many of these private lands move from ownership by Nevada Lands Corporation into ownership by many individual land speculators, many of whom live out of state as well as out of the country. This obviously makes it extremely and almost impossible to contact the owners of these private lands within our allotments. Almost all of these private lands are unfenced and most certainly do not have a legal fence as defined by:

NRS 569.431 'Legal Fence' defined. As used in NRS 569.431 to 569.471, inclusive 'legal fence' means a fence with not less than four horizontal barriers, consisting of wires, boards, and poles, or other fence material in common use in the neighborhood, with posts set not more than 20 feet apart. The lower barrier must not be more than 12 inches from the ground and the space between any two barriers must not be more than 12 inches and the top of the barrier must be at least 48 inches above the ground. Every post must be set as to withstand a horizontal strain of 250 pounds at a point 4 feet from the ground, and each barrier must be capable of withstanding a horizontal strain of 250 pounds at any point midway between the posts.

Federal law and state law have separate functions yet often times compliment each other when it comes to land issues and in this case grazing issues on unfenced checkerboard lands. We fully understand that as federal land managers the BLM has a duty to protect the resources on the federal lands. These federal lands are also to be managed for multiple uses and grazing is one of those uses. The uncodified Taylor Grazing Act (TGA) preamble specified three purposes: preventing overgrazing and soil erosion, stabilizing the "live stock industry dependant upon the public range," and

"providing for the orderly use, improvement, and development of the public grazing lands" we believe the BLM has for the most part achieved those stated goals in the preamble. Our allotments are not overgrazed and we have developed our range to bring our ranching business stability.

What concerns us at this point is the fact that because many of these private lands which we have customarily used for grazing purposes have now been broken into smaller parcels with numerous owners. The BLM is demanding lease agreements with these private land owners for exchange of use, but we are unable to make contact with these people. If we don't get the lease agreements we have been told we will have our grazing permits cut. These lands that are private lands are not under the authority of the BLM, but fall under state law. As stated earlier in this letter state law and Federal law often times compliment each other. This is definitely one of those times. Section 3 of TGA state in part: "Provided further, that nothing in this Act shall be construed or administered in any way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacturing, or other purposes which has heretofore vested or accrued under existing law validly affecting the public lands"..... We own over 85 vested livestock water rights on both public and private lands. Many of these private lands are not owned by us, yet we own the water rights and have a prescriptive easement under state law to access those water rights. We have continually, openly, notoriously, peaceably, and publicly grazed our checkerboard allotments as well as our predasessors in our chain of title since the 1860's. This is how our predicessors put the water to beneficial use, and how we continue to under our current grazing permit.

One of the state laws that compliments the TGA is NRS 568.300.

NRS 568.300 Herding or grazing of livestock on land of another without consent unlawful; liability for damages; attachment.

The title of 568.300 sounds bad until we read part 3. of this statute:

3. This section shall not apply to any livestock running at large on the ranges or commons.

Attorney Generals opinions: of 568.300 is as follows:
Section effectively permits erecting fence to show consent denied and requires it to exclude livestock running at large, has the effect of permitting an owner of land to erect a fence to show his denial of consent to the grazing of livestock under control and requiring him to erect a fence to exclude livestock running at large.
AGO 259 (8-24-1965), cited AGO 98-22 (8-7-1998).

Page 3
Tim DeLong

NRS 568.355 "Open Range" defined. "open range" means all unenclosed land outside of cities and towns upon which cattle, sheep, or other domestic animals by custom, license, lease or permit are grazed or permitted to roam.

Obviously the Nevada State legislature understood long ago that there would be conflicts between open range livestock producers and private land owners and constructed laws to give a remedy to both sides. The private land owners who do not want livestock on their property need to deny access with a legal fence under NRS 569.431. The lack of such a fence is consent to graze unfenced lands within our allotment. This begs the question: why is the BLM requiring us to obtain lease agreements with landowners inside of our allotments that have unfenced lands? Nevada's Attorney General in 1965 and again in 1998 have given the legal opinion that consent is given to graze when the lands are unfenced. The TGA in 315n. State Police power not abridged:

"Nothing in this subchapter shall be construed as restricting the respective states from enforcing any and all statutes enacted for police regulation"...

To us this means that the jurisdiction of private lands is left to the states, and state law has the remedy in statute.

Our relationship with the BLM has always been good and we look forward to resolving this exchange of use issue as soon as possible so we can continue to be an asset to the local economy. Cutting our grazing permit based on a regulation which does not reflect state law on private lands is contrary to the spirit of the TGA. It would have a negative affect on our ability to be sustainable. It would impair our vested water rights, which is contrary to Nevada State law and the TGA. There would be no benefit to any of the resources. We would have larger and hotter fires which will destroy habitat, forage, and property values. There is no upside to any proposed cuts in AUM's, nor is it necessary under Federal or state law.

In conclusion, we would like to work with the BLM, counties, and the State of Nevada to come up with a solution. Our legal research has shown that the remedy is already in both federal and state law, the laws and the Attorney Generals opinion of those laws should satisfy the BLM's requirement for exchange of use purposes.

We thank you for your attention to this matter and look forward to working with you.

Sincerely,

Tim DeLong and Family

Page 4
Tim DeLong

cc: Pershing County Commissioners
Pershing County D.A. Jim Shirley
Humboldt County Commissioners
Humboldt County D.A.
Steve Foster, Extension Office
Brad Schultz, Extension Office
Nevada Board of Agriculture
Representative Mark Amodei
Senator Dean Heller
NACO
State Director of BLM Nevada
Frosty Tipton
Nevada Cattlemens

TAB B

Sept 17, 2013

BLM
RESPONSE to
DeLong



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Winnemucca District Office
Humboldt River Field Office
5100 East Winnemucca Boulevard
Winnemucca, Nevada 89445
Phone: (775) 623-1500 Fax: (775) 623-1503
Email: wfoweb@blm.gov
www.blm.gov/nv/st/en/fo/wfo.html

In Reply Refer To:
4130 (NV024.06)

Tim Delong and Family
P.O. Box 367
Imlay, NV 89418



Dear Mr. Delong

This letter is in response to your August 23, 2013, and September 6, 2013, letters, and to issues raised in the August 30, 2013, meeting you and Mike Stremmer attended at the Winnemucca District Office. The subject of the meeting and letters relate to Exchange of Use (EOU) and percent public land issues for your permitted allotments based on private property you formerly controlled under lease. You had previously offered these leased private lands for the purposes of EOU so as to graze additional livestock within the allotments based on your control of these unfenced intermingled land in your grazing allotments. These previously leased private lands, however, are now no longer under your control due to the sale of these lands to other private parties.

The federal regulations contained in 43 CFR § 4130.6-1: Exchange-of-Use Grazing Agreements states (*italics added*):

“(a) An exchange-of-use grazing agreement may be issued to an applicant who owns or controls lands that are unfenced and intermingled with public lands in the same allotment when use under such agreement will be in harmony with the management objectives for the allotment and will be compatible with the existing livestock operations. The agreements shall contain appropriate terms and conditions required under § 4130.3 that ensure the orderly administration of the range, including fair and equitable sharing of the operation and maintenance of range improvements. The term of an exchange-of-use agreement may not exceed the length of the term for any leased lands that are offered in exchange-of-use.”

The regulations are quite clear regarding the requirement that an EOU applicant own or control the offered unfenced and intermingled private land for said lands to be eligible for the purposes of EOU.

BLM cannot adjudicate rights in private lands or settle disputes between private parties that pertain to private lands. For this reason, in order to process an EOU application, BLM requires clear evidence and proof of the ownership or control of the offered private lands, such as a lease, deed, or court order that adjudicates ownership rights. EOU authorizations under 43 C.F.R. § 4130.6-1 also fall within BLM's discretionary authority to approve or deny. If offered lands fall outside an allotment, are not in harmony with existing livestock operations, are fenced, or there is no legal instrument showing proof of control, BLM will not authorize EOU on those lands.

The BLM has not issued a decision reducing permitted AUMs for public lands on the Majuba, Humboldt House, or Humboldt Valley Allotments. Any reductions in EOU AUMs would be strictly based upon any reduction in private acreage you own or control that may have been previously offered and approved for EOU. For private lands currently owned or controlled within the allotments you hold a grazing permit for, please submit this proof of ownership or control to determine amount of EOU available. If you acquire or lose control of other lands please submit this information so the amount of EOU can be adjusted accordingly.

With respect to your questions about percent public land versus EOU, they are both considered under the same principle of whether the permittee owns or controls unfenced intermingled private lands within the allotment that will provide additional forage for livestock grazing. As discussed at the August 30, 2013 meeting, because of the potential for percent public land to fluctuate within your allotment(s) if there is a gain or loss in the amount of intermingled private land you own or control, BLM will modify your grazing permit from including a percent public land to authorizing EOU AUMs. This is necessary to avoid having to reissue a grazing permit with every change in the amount of property controlled, as the EOU AUMs are not billed and can be modified with any changes in private property ownership or control.

I understand that the loss of EOU AUMs for grazing on private lands you no longer control may potentially impact your ranching operation, and I will gladly discuss any options that may exist to limit impacts to your permitted livestock operation. However, based on federal grazing regulations, proof of ownership or control of intermingled, unfenced private lands within an allotment is required to authorize EOU.

The BLM is aware that you have been a permittee in good standing within the Winnemucca District for many years, and that you have been a good steward of the rangelands for which you hold a grazing permit. I look forward to continuing to work with you and your operation in future years.

If you have any questions please contact Derek Messmer at (775) 623-1500.

Sincerely,

A handwritten signature in black ink, appearing to read 'Derek Messmer', followed by a horizontal line.

Derek Messmer
Field Manager
Humboldt River Field Office

cc:

Pershing County Commissioners
Pershing County District Attorney
Humboldt County Commissioners
Humboldt County District Attorney
Steve Foster, Cooperative Extension
Brad Schultz, Cooperative Extension
Nevada Board of Agriculture
Representative Mark Amodei
Senator Dean Heller
NACO
Amy Leuders, BLM Nevada State Director
Frosty Tipton
Nevada Cattlemen's Association
Mike Stremmer

TAB C

Nov. 13, 2013
DeLong
Letter to
BLM
Seidlitz and
Messmer

November 13, 2013

Mr. Gene Seidlitz, District Manager
Mr. Derek Messmer, Field Manager
Humboldt River Field Office
Winnemucca District Office
5100 E. Winnemucca Boulevard
Winnemucca, Nevada 89445



Re: 4130 (NV024.06)

Dear Mr. Seidlitz and Mr. Messmer:

In your correspondence to us dated September 15, 2013, you responded to issues raised by us in correspondence to you sent in August and September of this year and in the meeting we and Mr. Mike Stremmer had in the Winnemucca District office. The subject of the correspondence and the meeting was BLM's Exchange of Use ("EOU") regulations. Of great concern to us was your assertion on the first page of your letter to us to the effect that we "had offered these leased private lands for the purposes of EOU so as to graze additional livestock within the allotments based on your control of these unfenced intermingled land in your grazing allotments." You then went on to say on the same page, and this is where our problem lies, that "[t]hese previously leased private lands, however, are now no longer under your control due to the sale of these lands to other private parties." Citing 43 CFR § 4130.6-1, you state that "[t]he regulations are quite clear regarding the requirement that an EOU applicant own or control the offered unfenced and intermingled private land for said lands to be eligible for the purposes of EOU."

There is no doubt that you are correct in that statement as far as it goes. However, it leaves unexamined exactly what that means. We have researched the matter ourselves and have consulted with those more knowledgeable that we are on this issue. We are not, however, attorneys so what follows is not a legal brief. We are satisfied that our research and consultations provide a firm basis for believing that we do satisfy the requirements of BLM's EOU regulation. For the purposes of the regulations, we do have sufficient legal control of the lands in question, indeed have an ownership interest in those lands, to qualify for EOU status without regard to whether we have a "lease". We will explain this further below, but before we do we should mention that we have reached out to the current owners of the privately-owned lands in question by presenting them with proposed grazing leases/consent to graze agreements for their consideration and signing.

These lease/consent agreement documents specifically provide that they would be in addition to, and not in lieu of, such existing rights as we already have (discussed below) and also provide that we are not waiving any such rights in the process of entering into these agreements. Clearly, of course, if the current landowners enter into these agreements, which we anticipate they will, the question of whether our existing interests in those lands satisfy EOU requirements would be moot at present. As you allude to, the previous lease agreements were sufficient to meet the EOU requirements in the past and these would be no different. Having said this, though, we nevertheless need to point out the interests that we already have and the fact that they are sufficient to meet the EOU's requirement for control both in the off chance that one of the landowners will decide not to enter into the lease/agreement and to put the issue to rest in the future should the lands change hands again and the current situation re-emerges.

We will set out the basic position we have on these lands and then will give you a further explanation. It all comes down to the question of what property interest we possess in the lands in question and what the meaning of control is.

Clearly, the purpose of the "owns or controls" language in § 4130.6 is to ensure that the party has the right to place livestock on the land or the consent of the landowner, however evidenced. For this, of course, ownership of the parcels in fee simple absolute is not necessary. In fact, little privately-owned land in the United States is owned in that state. Virtually all of the private land, if not all of it, is subject to divided interests, often referred to as "split estates". In fact, much of the land owned or managed by the United States is itself subject to such divided interests including, among other things, rights-of-way and other kinds of easements. It is for this reason that you or I would have a title search conducted before we bought a home or commercial property. Not only do we want to know if the seller actually has a title he can pass on, we want to know what easements and other rights may exist on those lands. Someone else may own an access easement, a mineral estate, a water right, a utility easement, or some other interest. Any person buying, inheriting, or otherwise acquiring that land will have to take it subject to whatever right-of-way, easement, profit, or other interest already exists in that land at the time of acquisition. Indeed, a leasehold interest is one of the interests in a third party which the purchaser may be stuck with when he acquires the land, depending on the terms of the lease. If you were to buy a house which the previous owner had leased to a third party for 10 years five years into the lease, you might very well have tenant for the next five years.

The same thing applies to lands which were once federally-owned or managed which subsequently came into private ownership. As you are no doubt aware, a number of interests were created by the Congress of the United States by statutory grants in the 1800s and later. The most famous of these, of course, was the Mining Act of July 26, 1866. The Act of 1866 did a number of things. It recognized the supremacy of states over water, provided for ditch and water conveyance rights-of-way, and specifically provided a grant for the construction of highways over the so-called federal lands which were accepted by the mere fact of use (a part of the Act of 1866 often referred to as "R.S. 2477", but RS 2477 was *only* a part of the Act). This Act, as the Supreme Court specifically noted, was the recognition of preexisting *rights*, not mere privileges.

For example, in Jennison v. Kirk, an 1878 decision of the Supreme Court (98 U.S. 453), the Court particularly found that the Act of 1866 was a “voluntary recognition of a pre-existing right of possession, constituting a valid claim to its continued use [rather] than the establishment of a new one.” The Supreme Court also recognized in the very next year that states could determine the rights of an appropriator of water (including conveyance of the water) and the interaction of those rights with federal rights to water in Broder v. Natoma Water & Mining Company (101 U.S. 274, 276). The Act of 1866 itself pointed to local and state laws, customs, and decisions of courts as the basis for determining the existence and scope of those rights. To this day, federal courts, and the BLM itself has recognized this fact and the limitations placed on the federal government by it. See, for example, the 10th Circuit’s 2005 decision in Southern Utah Wilderness Alliance v. BLM (SUWA II) reported in 425 F.3d 735, 740 and 70 Fed.Reg. 20979-80 (Apr. 22, 2005).

The Act of 1866 and later, similar congressional acts were in fact specifically intended to ensure that the rights recognized would be protected when the lands subject to them passed out of federal ownership and/or control and into private hands. Otherwise, the interests would have been valueless. Even where the federal government still owns land upon which such interests exist, the statutes governing every federal land management agency that exists recognize that the authority granted by those statutes, including but not limited to the Federal Land Policy and Management Act (“FLPMA”) and the Taylor Grazing Act, are limited by valid, preexisting rights.

For these reasons, when rights were acquired in the federally-owned or managed lands by ranchers, miners, and others, those rights survived the transfer of those lands into private hands, whether by sale, land swaps, or – as in the case here – by statutory grant of so-called checkerboarded lands to railroads which were subsequently sold or transferred to third parties. In fact, Congress could not have stripped the owners of such prior-acquired property interests of their ownership in the transfer of the lands containing them without becoming liable for compensation under the Fifth Amendment. In fact, when the United States claimed before the Claims Court and the Court of Appeal for the Federal Circuit that it had the right to keep a rancher from accessing water on federal lands without its permission (in Estate of Hage v. United States)(see for example, 687 F.3d 1281 (Fed.Cir. 2012), both the Claims Court and the Court of Appeal rejected that claim holding that the United States could not prevent the water rights holder from accessing and using those waters without paying compensation.

Similarly, the Nevada District Court in a case related to the Estate of Hage v. United States case, United States v. Wayne N. Hage and Estate of E. Wayne Hage, also recognized that a water right carried with it a right to access and use that water right across the intervening lands (which in this case had been in federal hands when the right was acquired) and, further, that livestock watering rights carry with them a right to utilize the forage around the waters and around the easements/rights-of-way to the waters up to at least a half-mile on each side of a stream or ditch in which water rights are owned and the access right-of-way to such waters, and a half mile radius around springs, ponds, or other water bodies. These rights, by necessity and law,

survive the transfer of lands from the public domain, federal or state, to private hands, just as when you buy a home on land on which water rights, easements, rights-of-way, mineral rights or other property interests belonging to a third party are located. You buy the land subject to those prior acquired rights.

Just as important as water rights-related rights-of-way and the like is the fact that state law governs grazing rights and what constitutes "consent" to grazing use in the absence of another, pre-existing right, at the least upon privately owned lands and even in the case of federal land absent some specific federal statute governing the federal land. See for example, Mason v. United States, 260 U.S. 545, 558, 43 S.Ct. 200, 67 L.Ed. 396 (1923) and United States v. Doyle, 468 F.2d 633, 636 (10th Cir. 1972). In fact, prior to the enactment of the Taylor Grazing Act in 1934 which assumed a measure of control over federally-owned or managed "public lands", Nevada's range laws also governed grazing on such lands. While one can argue about the effect of the Taylor Grazing Act on the regulation of grazing by the State on federally-owned or managed lands, there is no argument that the State had and has the authority on lands within the state which are not part of the federal domain. For this reason, we look next at Nevada's Range Laws.

In 1931, the Nevada Legislature became concerned for the regulation of grazing and the maintenance of peace and order, particularly in the light of the importance of grazing to the economic well-being of the state of Nevada. It enacted NRS 568.230 -568.290. Subsequently, it enacted other provisions having to do with what constitutes trespass and how a *withdrawal* of consent must be manifested when an owner of land not subject to a right in a third party to access and use such land wishes to do so. We discuss those provisions later.

Nevada's Range Law was designed to settle the question of who owned what grazing rights on public lands and where. This was done not only to "secure the peaceful and most economical use of public lands for grazing", but also to avoid "controversies that often lead to breaches of the peace" and to "protect[] the grazing uses established by customs based on the experience of the graziers." Ch. 226, Stats. 1931 (source of NRS 568.230 - 568.290). This law, in concert with the water laws of the State of Nevada, was subsequently used to determine the relative rights of graziers when a conflict arose. Section 568.240 specifically addressed both the definition of customary and established use, tied it specifically to persons and their grantors and predecessors-in-interest, and placed limits on the changes that could be made in customary uses. These facts make it clear that the Legislators were establishing and protecting the rights of persons and entities, not simply regulating uses generally. Specifically, this section provided as follows:

1. Customary or established uses as graziers, otherwise than under operation of law, as used in NRS 568.230 to 568.290, inclusive, shall be deemed to include the continuous, open, notorious, peaceable and public use of such range seasonally for a period of 5 years or longer immediately before March 30, 1931, by the person or

the person's grantors or predecessors in interest, except in cases where initiated without protest or conflict to prior use or occupancy thereof.

2. Any change in customary use so established must not be made after March 30, 1931, so as to prevent, restrict, or interfere with the customary or established use of any other person or persons.

The remaining portions of the Range Law make it clear that its provisions were not intended to interfere with any preexisting valid rights, whether grazing uses, access to and over lands, or the use of water for watering livestock. Further, they could not be used to "compromise[] any valid rights or priorities" which were already established as of March 30, 1931. In short, the Range Law was intended as an exercise of the State's police power to protect the rights of the prior users of the range and their successors. This would, of necessity, include the protection of water rights, access rights, and accompanying forage rights.

As noted above, the Nevada Legislature did make provisions for protecting property owners from trespass, including the "herding or grazing of livestock on the land of another without consent". Specifically, Nevada Revised Statute (NRS 568.300) provides in pertinent part:

1. It shall be unlawful for any person to herd or graze any livestock upon the lands of another without having first obtained the consent of the owner of the lands so to do. The person claiming to be the owner of such lands shall have the legal title thereto, or an application to purchase the same with the first payment made thereon.
2. The livestock which is herded or grazed upon the lands of another, contrary to the provisions of subsection 1, shall be liable for all damages done by such livestock while being unlawfully herded or grazed on the lands of another, together with costs of suit and reasonable counsel fees, to be fixed by the court trying an action therefor. The livestock may be seized and held by a writ of attachment, issued in the same manner as provided in chapter 31 or 71 of NRS, as security for the payment of any judgment which may be recovered by the owner of such lands for damages incurred by reason of violation of any of the provisions of this section. The claim and lien of a judgment or attachment in such an action shall be superior to any claim or demand which arose subsequent to the commencement of the action.

Subsection 3 of this statute, however, makes it clear that rangeland is not subject to these provisions.

3. This section shall not apply to any livestock running at large on the ranges

or commons.

NRS § 568.300. Once again relying on custom (which has the force of law) and practice, as well as lease, license, or permit, the statute defines ranges or commons as “all unenclosed land outside of cities and towns upon which cattle, sheep or other domestic animals by custom, license, lease or permit are grazed or permitted to roam. (NRS § 568.355.) In short, Nevada is what is commonly referred to as a “fence out” or “exclosure” state. As stated by the Nevada Attorney General,

Nevada law has, since 1893, exempted owners of “livestock running at large on the ranges or commons” from civil liability for trespass pursuant to NRS 568.300. See generally Op. Nev. Att’y Gen. No. 259 (August 24, 1965). See also NRS 569.450, which prohibits an award of damages for “trespass of livestock on cultivated land in this state if the land, at the time of the trespass was not enclosed by a legal fence.” (Emphasis supplied.) Also consistent with Nevada’s laws favoring livestock owners, NRS 568.360 exempts the livestock owner from liability for any damages related to the traversing of animals on highways in those areas.

Op. Nev. Att’y. Gen. No. 1998-22 (August 7, 1998) (citing the NRS provisions above and Chase v. Chase, 15 Nev. 259 (Nev. 1880); Yager v. Deane, 853 P.2d 1214, 1217-1218, (Mont. 1993); Kenney v. Walla Walla County, 728 P.2d 1066, 1068, (Wash. Ct. App. 1986); Maguire v. Yanke, 590 P.2d 85, 91 n.7, (Idaho 1978), and cases cited therein).

In short, consent is presumed absent an affirmative act of the landowner demonstrating denial of consent by erecting a legal fence to exclude livestock running at large. (The provisions of NRS 568.300, which prohibit the herding or grazing of livestock upon the land of another without consent, but which excepts livestock running at large, has the effect of permitting an owner of land to erect a fence to show his denial of consent to the grazing of livestock under control and requiring him to erect a fence to exclude livestock running at large. Op. Nev. Att’y Gen. No. 259 (August 24, 1965).

Of course, such “denial of consent” can only be made where the landowner’s control of his property is absolute; that is, the grazer (in this case) has no easement, right-of-way, water right, or forage or other right on the land in question. If he or she does, then the landowner can no more erect a fence to keep that grazer out than can a landowner erect a barrier across a driveway in an access easement owned by a third party. That third party has a property interest and a right to utilize that property for its proper purpose for which further consent cannot be required. The landowner interferes with the right at his legal peril.

Like other rights recognized by the Act of 1866 (such as R.S. 2477 rights-of-way and vested water rights, among others) as well as by other federal and state statutes, there is very often no paper record of the right. Access, ditch, flume, and other rights-of-way recognized or granted by the Act of 1866, for example, did not come accompanied by deeds. The rights were

acquired by the act of construction or use, that is the customary and historic use of the range itself in accordance with local custom, laws, and decisions of courts. Indeed, in the case of livestock, the point of diversion itself was often the cow's head. As we pointed out earlier, stock watering rights are accompanied by an easement or right-of-way to get livestock to and from the water and the right to consume forage on the way to and from the water, rights that were protected and preserved when the lands on or across which such rights existed was transferred into private ownership. The lack of title documents does not render the rights any less valid nor are they any less protected by law. The rights can be established by many different kinds of evidence, historical and other.

For example, the ownership of these rights can be shown by demonstrating that the rancher and/or his predecessors-in-interest customarily used the land for grazing and/or as an access route for livestock to or from water on the property or elsewhere, and/or exercised a forage right in connection with such an easement or right-of-way, or a water right. The historical use and a straightforward tracing of the rancher back through his or her grantors or predecessors-in-interest prior to the time of the transfer of the property into private hands. Indeed, your office most likely already has pertinent information in its files on most of the ranchers, if not all of them, in the District in their permit files.

In short, under both state and federal law we have "control" of the private properties for the purposes of BLM's EOU regulations based on our water rights, forage rights, and easements/rights-of-way, acquired prior to the time the lands passed into private hands. Even were this not true, the lands in question clearly qualify as open range land under Nevada Law and consent to use of the land for grazing has not been withdrawn by its owners.

We will be happy to work with you to supply you with any further information you may need.

Sincerely,



Tim DeLong

Tim DeLong Family Trust

cc. Pershing County District Attorney
Pershing County Commissioners
Humboldt County District Attorney
Humboldt County Commissioners
Steve Foster, Cooperative Extension Office, Humboldt
Brad Schultz, Cooperative Extension Office, Pershing
Rep. Mark Amodei
Senator Dean Heller
Senator Harry Reid
NV Board of Agriculture and individual members

NACO

BLM NV State Director, Amy Leuders

NV Cattlemen's Association and individual officers

NV Dept. of Agriculture and individual officers

Copies made available at Nevada Cattlemen's Association Annual Convention

9

Board Member Presentations

9A

Director's Evaluation

*Possible Action

9B

Officer Elections

*Possible Action

10

**Public
Comment**

11

Adjournment